the weekly Standard

AUGUST 21/28, 2006

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AGAINST 'PROPORTIONALITY'
JEREMY RABKIN

The Ned Lamont Democrats

MATTHEW CONTINETTI

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—Kathryn Newmark and Veronique De Rugy

The Why Chromosome

How a teacher's gender affects boys and girls

Gender gaps in the test scores of boys and girls are a matter of real and growing concern. We've known since the 1970s that girls outscore boys in the NAEP reading tests, while boys outperform girls in math and science. Boys are increasingly less likely than girls to attend college and to receive bachelors degrees; female college students are underrepresented in engineering and computer science. One controversial but popular response to these patterns has been a renewed push for single-sex education. Is there convincing evidence of the impact of a teacher's gender on student learning?

—Naomi Schaefer Riley

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"A Hell of a Threat Out There"

The Scrapbook had an opportunity to speak with a Bush administration bigshot last Friday about the thwarted terror plot. We would love to tell you who it was, The Scrapbook being a full-disclosure kind of guy, but our interviewee insisted on being called merely a Senior Administration Official (SAO).

Scrapbook: Some have described this as the most sophisticated plot since 9/11. Do you agree?

Sao: "I think that's a fair assessment. What concerned us is that it began to look more and more like they were beginning to implement it; activating plans for a trial run, discussion of dates, homing in on airlines—American airlines."

Scrapbook: Bush administration officials often say that it's not an accident that we haven't been hit since 9/11. Can you discuss what post-9/11 Bush administration policies played a role in thwarting these attacks?

Sao: "Not without getting into classified areas. There are two points I'd make. This should be a reminder to everybody that there's still a hell of a threat out there. It's also a cause for some satisfaction that we broke it up. It's not an accident that we haven't been hit. It's because we've been very aggressive in going after terrorists. . . .

"The other thing that stands out in my mind—everybody still focuses on the Middle East as the seedbed where this stuff germinates. But this is not the first time that we've seen a number of people, citizens of a European country, some of them presumably second generation—we don't know everything about their backgrounds at this point—plan this kind of attack. There are parts of Europe that are a breeding ground for this kind of activity."

Scrapbook: Democrats yesterday pointed to this plot as evidence that jihadists don't like our policies in Iraq.

Sao: "I think it's a huge mistake for Americans to think that somehow we are responsible—that the actions of the jihadists are justified by U.S. policies. We weren't in Iraq when they hit us on 9/11. This sort of blame-America crowd isn't helpful. Look at the series of attacks. It isn't just U.S. policy. Why do you blow up a nightclub in Bali or hit a Jewish organization in Tunis or go after a hotel in Mombasa?

"The idea that the jihadists would all be peaceful, warm, lovable, God-fearing people if it weren't for U.S. policies strikes me as not a valid idea. [Democrats] do not have the understanding or the commitment to take on these forces. It's like John Kerry. The law-enforcement approach doesn't work." ♦♦

A SEAL Remembered

In his article "The New Band of Brothers" (June 19, 2006), Michael Fumento wrote of the courage and professionalism of 19 Navy SEALs in Ramadi whom he photographed and filmed during a firefight while he was embedded there. "Now there are 18," Fumento writes. "Aviation Ordnanceman 2nd Class (SEAL) Marc Alan Lee has died a true hero's death, laying down his life for his fellow men. He is the first SEAL killed in Iraq."

"According to an embedded reporter with the *Stars and Stripes* newspaper," Michael writes on his blog at *fumento.com*, "an enemy sniper shot and wounded one of Lee's SEAL comrades at the start of a firefight that lasted over an hour. Another SEAL was wounded in the battle that proved to be one of the largest in Iraq since the beginning of the insurgency. Lee was posthumously awarded the Silver Star, one of the highest awards in the military, along with a Bronze Star and a Purple Heart.

"'During the operation, one element member was wounded by enemy fire. The element completed the casualty evacuation, regrouped, and returned onto the battlefield to continue the fight,' the citation reads. 'Petty Officer Lee and his SEAL element maneuvered to assault an unidentified enemy position. He, his teammates, Bradley Fighting Vehicles, and Abrams tanks engaged enemy positions with suppressive fire from an adjacent building to the north.

"'To protect the lives of his teammates, he fearlessly exposed himself to direct enemy fire by engaging the enemy with his machine gun and was mortally wounded in the engagement. His brave actions in the line of fire saved the lives of many of his teammates.'"

Fumento adds: "After watching them in action from a rooftop I shared with them, I wrote of Lee and his comrades, 'Those SEALs fight like machines.' But they're not, of course. This SEAL left behind his parents and young wife, who says they were planning a family. He also truly cared more about the people of Ramadi. 'He said they were begging for the military to release them from this tyranny and were appalled at the things that were going on,' his mother Debbie Lee told a reporter."

Fumento concludes: "God bless our troops in Iraq; God bless the men fighting to liberate Ramadi; God bless the SEALs." ♦

U2 Can Avoid Taxes

Though The Scrapbook takes a dim view of bleeding-heart celebrities, we've occasionally had a weakness for U2 singer Bono, whose campaign for debt relief and foreign aid hasn't stopped him from befriending the likes of Jesse Helms and George W. Bush. But it turns out the man who routinely badgers Western taxpayers to spend more helping impoverished Africans

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isn't beyond doing a little canny tax planning himself.

As the *Daily Telegraph* reported last week:

> The rock band U2 came under criticism yesterday after reports that it has moved a portion of its multi-million-pound business empire out of Ireland for tax reasons. The band . . . has reportedly transferred some of its publishing company to Holland.
>
> Based in Dublin, U2 have long benefited from the artists' tax exemption introduced by Charles Haughey, the late prime minister. It is reported that the band's move has been made in response to a £170,000 cap on the tax-free incomes introduced in the last Irish budget.
>
> Joan Burton, Irish Labour's finance spokesman, said: "Having listened to Bono on the necessity for the Irish Government to give more money to Ireland Aid, of which I approve, I am surprised that U2 are not prepared to contribute to the Exchequer on a fair basis along with the bulk of Irish taxpayers.
>
> "I share Bono's desire to see more resources devoted to Ireland Aid, but it is more difficult to make a case for it if everyone is not willing to be part of the social contract that stipulates that everybody should pay their fair share in what is a low-tax country."

Burton has a point: Ireland ranked third in the 2006 Index of Economic Freedom, put together by the Heritage Foundation and the *Wall Street Journal*, behind only Hong Kong and Singapore and ahead of such famous tax havens as Luxembourg and Iceland.

We're hardly opposed to rock stars' seeking out the most hospitable tax climate for their riches. (U2's collective fortune is estimated at roughly $800 million.) But whatever happened to Irish pride? ♦

Satire Alert

From our friend Scott Ott, proprietor of the inimitable *scrappleface.com*:

***

UK PANEL ASKS:
WHY DO THEY HATE
AIRPLANES?

(2006-08-10)—The British Parliament, in a rapid response to a terror plot foiled by Scotland Yard yesterday, announced formation of a study panel today to determine why some Muslims hate airplanes.

Early reports indicate 21 men have been taken into custody in connection with a plan to take down an unknown number of U.S.-bound passenger jets originating in Great Britain.

The expert panel will examine various theories about why airplanes engender such hatred among devoted followers of a peaceful religion.

"Is it the horrendous noise? The speed? The condensation trails?" said one unnamed source close to the panel, listing some of the areas of inquiry the experts plan to pursue. "Because if it's any of those things, we can get to work on engineering changes to make airplanes more tolerable to our Muslim brothers." ♦

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Casual

Washington Moments

Eating dinner at a modest restaurant a block from our house the other night, we had a minor Washington moment. Leaning over toward me and indicating two men at a nearby table, my husband said quietly, "Who do you suppose that is with Lindsey Graham?"

It's true, we live near some congressional office buildings (you should see our dry cleaner's "power wall" of signed pictures from the likes of George Mitchell and Mary Landrieu and Bob Dole; and, yes, that *was* Sandra Day O'Connor I noticed a while back picking up some odds and ends at the corner store).

But these things don't happen only in select locations in the city. I grew up in the suburbs, amid constant reminders that this is a company town.

When I was in the eighth grade at the school across the street from our house in Arlington, my best friend was a girl who had moved to Virginia from Texas because her father was an aide to the vice president. She had a brother named Lyndon, and she and her sister used to go to unbelievably glamorous-sounding parties with Capitol pages and sometimes even the Johnson girls. My friend had actually been to the inaugural ball.

That was the year my sister ran for president of the ninth grade against a girl named Lyn Glenn mere months after Lyn's father had become the first American to orbit the earth. Stef lost the election, but I don't think she minded. We all got a charge out of the fact that the bald neighbor with the Ipana smile who used to jog around the Williamsburg Junior High field early every morning had suddenly been catapulted to global fame.

It's also probably the year I saw the soles of Jackie Kennedy's shoes. The first lady had come to my ballet school to bring little Caroline to her first class. We gawkers were kept out of the studio, despite our best efforts, but the entrance was up a few steps, and we could look through the crack under the door. So near and yet so far! Of course I'd already seen the exquisite Jackie in the flesh—admittedly, from a distance—at the inaugural parade. My family had watched it from a friend's fifth floor law office on then-shabby Pennsylvania Avenue. Just as the royal couple passed, the handsome new president had looked up and waved. Along with the unutterable elegance of Mrs. Kennedy's inaugural outfit—*that muff!*—the gesture had me and Stef swooning.

Darren Gygi

During the Carter years, another sister, Jen, shared a cleaning woman with the Brzezinskis. This was no ordinary cleaning woman. Jen used to regale me with her doings, of which I've retained only the names of her three children—Shannon, Shiloh, and Shenandoah—and the impressive fact that when she married her much younger second husband in my sister's back yard in Great Falls (bucolic before the coming of the McMansions), she made a grand entrance bareback on a white horse.

The Carters themselves I once bumped into at the theater. I was treating an out of town visitor to a show at the National—*Anna Christie*, with Liv Ullmann. Apparently word that the president and first lady were in the audience made its way backstage in time for someone to customize the script. A nice crack about a farmer stinking of dung and peanuts brought down the house.

But not all my Washington moments are ones I look back on with pleasure—quite the opposite in one case. After my father died, my mother bought a house in the city that had an apartment in the basement. Her first tenant was a freshman member of Congress whose family had stayed behind in California. When I think of the last time I saw him, I can only cringe.

One ill-fated day, a radiator sprang a leak and flooded my mother's new dining room. In the course of getting the mess cleaned up and the repairman in, someone said it would be worth checking the apartment below. But the key couldn't be found, and Mother—casual in the unaccustomed role of landlord—soon forgot about it. Somehow when the congressman got home from his district a day or two later, it fell to me to answer the door.

I'll never forget him standing there with his arms folded across his chest. Silent. Not reproachful—not at all. I guess he must have been pretty tired when he got home to his squishy carpet and sodden bed.

He moved out soon after that, though he didn't leave the city. He's still in Congress, in fact, all these years later. Washington has watched his hair and mustache slowly turn snow white. Judging by his politics, he's unlikely to see these words, but should they happen to fall under his gaze, I want him to know that I remain to this day mortified at the boorish welcome we gave him to our town.

Claudia Anderson

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Great Balls of Fire

Regarding Christopher Hitchens's "Scorched Earth" (July 31): The real consequence of an indiscriminate bombing campaign was the changing of the German (and Japanese) mind after 1945. As a German born and raised in Hamburg, I am pretty sure that the air campaign extinguished German romantic militarism.

The bombing bore two lessons for generations to come: First, those who did not prevent Hitler from rising to power in 1933 perished along with the Nazis—a lesson that made Germans very wary of extremist parties in *statu nascendi* ever since. Second, the war came home to German women, instead of being fought merely in the trenches. As such, for the first time since the Thirty Years' War, the female half of Germany drew on firsthand experiences when cautioning against militaristic slogans. In the years following 1918 that had not been the case, resulting in young Germans falling prey to heroic tales the Nazis were telling them about Langemarck and Verdun.

After 1945, it was different. I have known many Hamburg citizens who could not stand a cozy fireplace any longer, even decades later, for the terror of the fire bombing made a fireplace unbearable to them. The reply an American general gave to a reporter in March 1945 when asked why the Allies bombed small cities with no strategic value has turned out to hold true: We want Germany to remember for a hundred years the consequences of waging war against us.

It is, I might cautiously add, an experience that our present enemies are missing. A strategy that makes allied soldiers and pilots tiptoe and hop around mosques and kindergartens is a very humane and sensitive one. It might, though, fail to drive home a lesson that Japanese and Germans learned the brutal way: Citizens who do not care about what their neighbor does, citizens who do not rise to the occasion when there is time to do so, will pay dearly for it. Terrorists hiding among the populace count on precisely such complacency.

In Germany and Japan, the allied bombing campaign made it clear to everyone that missing courage may not be a means of getting out of the way; to the contrary, it may draw those who do not stand up against megalomaniacal hotheads into the abyss as well. That is a lesson the Allied warplanes, amidst their bombs, pounded the Germans and Japanese with, and though I hate to admit it, given the sacrifices of those who did not favor the wars of Hitler or Hirohito, it did indeed work.

Torsten Krauel
Washington, D.C.

Christopher Hitchens's "Scorched Earth" makes a philosophical and rhetorical error in the waning paragraphs when he first attacks the principles behind "war-shortening" and then goes on to promote the principles behind "preemptive" action as if those basic principles were not one and the same: namely that more violent action now will mean less death and violence later. The error of treating them separately is one of the few weaknesses in his review. I understand Hitchens was also attacking the after-the-fact justifications for questionable actions during a war, but the idea of "war-shortening" itself should not be suspect simply because it has been abused.

The line blurs between what is preemption and what is war-shortening because both have the same idea at heart. Had we taken Falluja, Ramadi, and many other Sunni cities from the outset of the "cessation of major hostilities," then we might have arguably shortened the war and also taken preemptive measures by keeping those cities from becoming festering sores of terrorist activity.

Michael E. McDaniel
Dallas, Tex.

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The Bugs Bunny Democrats

We should work diplomatically and aggressively to give them reasons why they [the Iranians] don't need to build a bomb, to give them incentives. . . . I'd like to use carrots as well as sticks to see if we can change the nature of the debate.

Ned Lamont, April 25, 2006

Ned Lamont's victory over Joe Lieberman in the Connecticut primary was a triumph for the European wing of the Democratic party. So it's fitting that Lamont is pro-carrot. It was impossible to go to Europe during Bush's first term without getting a lecture about the utility of carrots, the futility of sticks, and the Bush administration's regrettable neglect of the former and unfortunate proclivity for the latter. So Lamont is an appropriate spokesman for what one might call the Bugs Bunny caucus that now dominates the Democratic party.

Lieberman is fighting that dominance by not conceding his seat to Lamont—but others are rushing to ingratiate themselves to the new powers that be in their party. Former Clinton U.N. ambassador and hopeful Democratic secretary of state Richard Holbrooke—something of a Liebermanite in the past—tried to get right with the Bugs Bunny-ites in a *Washington Post* op-ed two days after Lamont's victory. His point? More diplomacy. In particular, we need "sustained high-level diplomacy" with Syria and Iran.

Now Holbrooke is too clever to go into full Bugs Bunny mode. In fact, he is too clever to say with any precision at all what his diplomatic initiatives would consist of—and he is clever enough to try to cover his bases by emphasizing not once but twice that all of this diplomacy with Syria and Iran (and, implicitly, Hezbollah) would have to be conducted "in full consultation with Israel at every step." But it is clear that the point of this diplomacy would not be to defeat or disarm Hezbollah (a goal Holbrooke never mentions). Nor would it be to stop Iran's nuclear program (a goal whose importance he minimizes).

Instead, there should be three U.S. foreign policy priorities: "containing the violence," "finding a stable and secure solution that protects Israel," and "unwinding America's disastrous entanglement in Iraq in a manner that is not a complete humiliation and does not lead to even greater turmoil." The first really means not defeating Hezbollah. The second means nothing. As for the third—"not a complete humiliation"—now there's a foreign policy slogan for the Bugs Bunny Democrats!

So the Democrats are hopeless. Unfortunately, back in the real world, Bush administration policy hasn't been particularly strong either. During its second term, the Bush administration has come too close to embracing Holbrookean passivity. And what good has the recent affinity for carrots done us? Are our enemies in retreat? Are Mahmoud Ahmadinejad, Moktada al-Sadr, Bashar Assad, the Sunni holy warriors in Iraq, al Qaeda operatives and sympathizers in the United Kingdom, and Kim Jong Il on the run? Have they become more cooperative, and less bent on trouble, since Secretary of State Rice started serving up the carrots last year?

No. Consider David Brooks's important *New York Times* column last week summarizing the views of a Bush administration official with whom Brooks had had a conversation—a conversation that, as Brooks says, "sheds light on where we've been and where we're going."

Here's the key statement by the Bush policymaker:

> We're part of a united front on Iranian nukes. The odds are there will be sanctions against Iran by the end of the year, though how strong I don't know. We're trying to build a successful government in Iraq. We have to get out from under the blow to our authority caused by the torture and detainee issues. And we have to get aggressive on the Palestinian problem. That's essential to strengthen moderate regimes.
>
> We're not going to be spending as much blood or treasure as over the past few years. We have to make up for it with diplomacy backed by a hint of steel.

As *Washington Times* editorial page editor Tony Blankley noted, the interview "suggests that we intend to subordinate firm military or even firm diplomatic action to winning the love of the Arab Street"—and, I would

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add, to seeking the approbation of European chanceries and Turtle Bay. The Bush policymaker seems to be indulging in what Blankley calls "a dangerous fantasy" that Iran and Hezbollah can be dealt with through clever diplomacy and continued U.N. resolutions. As Blankley mordantly comments on the "hint of steel" that will allegedly be backing up all this diplomacy: "More likely a hint of lavender."

One senses from some of the president's recent statements that he knows better. Developments over these extraordinary last few weeks, from Tehran to Baghdad to Lebanon to London, have reminded us of the dangers we face and the implacability of our enemies. Here's a suggestion for the president: When the State Department asks him to embrace the path of diplomacy-über-alles, he should ask himself this question: What would the Bugs Bunny Democrats think? If they would approve, then the president should kill the initiative. The State Department has succeeded in the past year in making the Bush administration more Euro-friendly and U.N.-attentive than ever. For this, the president has reaped no political benefit at home—and the dangers continue to mount abroad. How Bush deals with Ahmadinejad's terror-supporting and nuclear-weapons-pursuing Iran will be the test.

—*William Kristol*

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Come Home, Connecticut

McGovernism is alive and well in the Nutmeg State. BY FRED BARNES

A TERRORIST CONSPIRACY to blow up American airliners flying from Britain to the United States—surely the most threatening terrorist plot since 9/11—was broken up last week. The fighting between Israel and the terrorist group Hezbollah continued to raise the possibility of a full-scale Middle East war. And in Baghdad, American and Iraqi soldiers waged a last-ditch battle to cleanse the city of insurgents and terrorists and suicide bombers.

Meanwhile, Democrats ousted their leading national security hawk, Senator Joe Lieberman of Connecticut, and replaced him with a rich dilettante, Ned Lamont, who ran his campaign on the single issue of getting American troops out of Iraq.

So it comes down to this: As the world got more dangerous, the Democrats got more pacifist and more left-wing. At the least, they have become less committed (or not committed at all) to a strong national security policy and less eager to defend America's interests around the world or to promote democracy.

The nomination of Lamont as the Democratic Senate candidate in Connecticut brought into focus what are emerging as key Democratic positions: a deep aversion to the use of force, a naive belief in diplomacy that comes close to outright appeasement, a view that President Bush's war on terrorism is a greater threat to America than Islamic terrorism itself, and declining support for Israel.

Peter Steiner

The Democratic party's lurch to the left is accompanied by a cold partisanship. Simon Rosenberg, whose New Democrat Network was once touted as a force for moderation, said "the meaning of Lamont's win" includes—indeed requires—"a new progressive politics of confrontation, not accommodation."

In terms of ideology, Democrats have adopted a slightly varnished version of the staunch leftism associated with European parties. Those are *anti-American* left-wing parties, by the way. In terms of politics, Democrats have moved in a direction unlikely to succeed over time in a country with a center-right majority.

But this may make no difference in the midterm election on November 7. Democrats are not the issue this year. As things stand now, an unpopular president, a dejected Republican party, and a war in Iraq with no end in sight are the chief issues. Democrats should benefit from all of these. Only the terror issue, revived by the plot to blow up U.S. airlines, stands in the way of substantial Democratic gains in the House and Senate.

In 2008, however, Bush will step down and a new president will be elected. And the paramount issue will be national security, as it always is in presidential years. Democrats, weak on national security and growing weaker still, are bound to suffer.

The rejection of Lieberman was important not only because he backs the Iraq war and is a Democrat willing to deal with Bush, but also because of who he is. He is the last of a long line of pro-defense Democrats once called Cold War liberals, a line including Harry Truman, JFK, and Henry Jackson. He is one of the party's most prominent defenders of Israel. And he was picked as the Democratic vice presidential candidate in 2000 largely because of his reputation as a hard-liner on defense. Lieberman is not just another Democrat.

His defeat may not push Democrats further to the left, though the

Fred Barnes is executive editor of THE WEEKLY STANDARD.

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party's left-wing zealots are eager to. But it does reflect a trend already seen in the attitude of congressional Democrats and in policy flips by leading Democrats. Since Bush was reelected in 2004, Democrats have attacked his aggressive approach to fighting terrorism. They have balked at renewing the Patriot Act, criticized NSA eavesdropping on terrorist phone calls to and from the United States, and complained about surveillance of wire transfers of money without a court order. They insist Bush has wildly overstepped his presidential authority in combating terrorism.

Outside Washington, Al Gore and John Edwards have become harsh critics. Gore was picked as Bill Clinton's running mate in 1992 because he had been one of only 10 Senate Democrats to vote for the first Gulf war against Saddam Hussein. Later, the Clinton-Gore administration called for "regime change" in Iraq. Now Gore is a passionate opponent of the war in Iraq. And Edwards has repudiated his war vote in 2002 when he was a senator. He was the first major Democrat to call Lamont last week with congratulations.

Lieberman is not the first Democrat targeted by the leftist brigades in the party, led by MoveOn.org. They took on Rep. Henry Cuellar of Texas because of his friendly relations with Bush. He narrowly defeated a left-wing primary foe. Then they mounted a primary challenge against Rep. Jane Harman, who supports a vigorous war on terror. She won handily, 62.5 percent to 37.5 percent. Lieberman was their first scalp.

With Lieberman now running as an "independent Democrat" against Lamont, prudent Democrats are hoping the Connecticut race gets minimal media attention. After all, whatever the outcome, a Democrat will still hold the Senate seat.

A lot, though, will depend on the type of campaign Lieberman runs. In his concession speech, he concentrated on attacking Lamont as a devotee of "the old politics of partisan polarization." That's a nice theme, but it probably won't win him a fourth Senate term. He needs to campaign on national security. If he does, there are enough independents, Republicans, and hawkish Democrats, even in a blue state, to reelect him.

That would make the Lieberman-Lamont contest a national race guaranteed to draw intensive press coverage throughout the fall. The central issue in the campaign wouldn't be Bush and Republicans. The issue would be Democrats and whether they had bolted so far to the left that they couldn't be trusted to protect the nation.

Democrats were at this juncture once before. During the Vietnam war, the party was taken over by left-wing activists who caused the landslide loss of 1972 and left a legacy of softness on national security that plagued the party for a generation.

Democrats have convinced themselves that times are different today, different even from 2002 and 2004, when Bush and Republicans used terrorism and national security to win unexpected victories. They believe the president and his party have squandered their advantage on national security by prolonging an unpopular war in Iraq. This, they think, gives them a free pass to dump Lieberman. Democrats are betting the future of their party on the idea that history won't repeat itself. Their problem is that history, one way or another, often does. ♦

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Letter from London

Unfazed or underwhelmed?

BY JEFFREY GEDMIN

London

I THOUGHT LEAVING ISRAEL for London would make me safer. I came via Zurich, and the mood in the airport before takeoff was both calm and creepy. I noticed on the monitors that the entire day's flights to Heathrow were suddenly posted as either canceled or delayed. In the Swiss Air lounge, passengers gathered around television sets as reports came in that British authorities had thwarted a plot by terrorists to blow up multiple aircraft in midair.

I felt I had been here before. On the morning of 9/11, I was on a United Airlines flight out of Washington's Dulles airport. We had been in the air maybe 30 minutes, bound for the west coast, when the pilot announced that the president had declared a state of national emergency. Our flight was first diverted to Pittsburgh and then suddenly, without explanation, to Indianapolis. I would only learn later about United Airlines Flight 93, apparently just ahead of us, which had crashed in an open field near Shanksville, Pa.

I made it to London. I was booked to fly into London City airport, and, while Heathrow passengers were left stranded back in Zurich, my flight arrived with a mere 30-minute delay. Extra police were patrolling everywhere when we landed. They wore large black bulletproof vests, and each officer I saw held his finger on the trigger of a machine gun. It all looked rather ominous. In front of the airport, cars letting off and picking up passengers drew constant attention, as police officers would approach each vehicle, peer inside, and signal for drivers to keep moving. Overzealous cops? Was this a gesture to reassure the public, or did the police know something we did not know? I had no complaints.

World Picture News / Clare Kendall

Police in High Wycombe, England, after rounding up suspects in the bomb plot

John Reid, Britain's home secretary, had just given a speech that critics had berated as strident and excessive. "They just don't get it," Reid had said, a blast directed at the British media and legal establishment. Reid insisted the British people "probably faced the most sustained period of severe threat since the end of the Second World War." It's unclear exactly what Reid knew when he spoke, hours before the raids, but news of the dramatic plot has made Reid's speech look a bit more compelling. Tony Blair has gotten a desperately needed boost for his tireless calls to take the terrorist threat seriously. Will it last?

It's hard to see how the debate here will sort itself out. The events of the last days have reignited British agonizing over how the country integrates its Muslim population. In London, some neighborhoods are as much as 35 percent Muslim. And so far it looks like many of those arrested in the plot, like the terrorists who struck last summer, are citizens and apparently middle class. The "poverty-causes-terror" school may be about to be further discredited.

Michael Gove, a former assistant editor of the *Times* and now a rising star in Tory politics, worries things may not change substantially for the better. In Britain there has been a crucial debate, says Gove, between those who think Blair has exaggerated the threat—and believe that Islamic terror has mostly to do with misguided Western policies (Iraq) and the

Jeffrey Gedmin is director of the Aspen Institute Berlin and columnist for the German daily Die Welt.

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Israeli-Palestinian conflict—and those who believe that Islamism is ideological and global. The Bush-Blair side of this argument has not fared very well.

The failure to find weapons of mass destruction and the considerable violence in Iraq since Saddam's deposing effectively decimated the prime minister's standing. The Iraq war was never popular with the British. Missteps at home by the British authorities in the war on terror have not helped either. There was the tragic killing last summer of a Brazilian man, Jean Charles de Menezes, who police mistakenly had suspected of being a terrorist. This came on the heels of the July 7 subway and bus bombings that took 52 lives. More recently, there was "Forest Gate"—the scandal named after the residential area in the London neighborhood of Newham, which has a Muslim population of some 25 percent. Two months ago, in an operation involving some 250 police officers, authorities arrested in their Forest Gate home Mohammed Abdul Kahar and his brother. Police shot Abdul Kahar in the shoulder. Authorities had expected to find chemical weapons in their possession. They found nothing, and the two brothers were later released. Scotland Yard issued an apology. Blair stood by the police, though, "101 percent," as he said, adding at the time: "You can only imagine, if they failed to take action and something terrible happened what the outcry would be then."

As ghastly as the intentions of the current airline plotters seem to have been, Blair's critics have already started stirring up what Gove calls the "here-we-go-again" syndrome. On the day after police and security officials announced that they had arrested 24 suspects, the left-wing *Guardian* wrote, with a hint of approval, that websites are already "chattering with distrust of ministers and the government's good faith." Depending on how the investigation proceeds, you cannot rule out that Britain's Michael Moore conservatives will follow suit. The Tories have their own share of Bush bashers, and the party as a whole has not exactly been a rock on these issues.

Milling about London, though, you get a sense of normalcy. The British still have that "stiff upper lip" thing, and while there was a threat of unimaginable destruction—security alerts remain at the unprecedented "critical" level—nothing has actually happened, not yet anyway. I just saw on Sky Television an interview with a father and daughter at Heathrow. The pair missed their first flight but find themselves ready now for their trip to Canada and complaining that a new electronic video game they bought for the flight cannot be brought on board. I had to laugh. Undeterred, materialistic, and hedonistic as ever—this must be exactly the sort of thing that drives the Islamists crazy. ♦

Michael Ramirez

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The Siege of Haifa

Missiles, ball bearings, and summer camp underground. BY DAVID AIKMAN

Haifa, Israel

"HAIFA IS STRONG," reads the placard attached to several of the city's street signs. It needs to be. This city of a quarter million, the third largest in Israel after Tel Aviv and Jerusalem, has been pummeled almost daily since the Hezbollah rocket assault on Israel began on July 13, the day after hostilities between Israel and Hezbollah broke out. The number of rocket landings here is around 100, among a total of at least 3,500 on northern Israel, and the impact of the war on this city has been devastating.

Traffic is light to nonexistent in the city center, and the port, Israel's most important nexus of imports and exports, is completely dead. Not a ship is in the harbor. Importers have been forced to divert their cargoes to Cyprus, where storage fees will have to be paid during the war and additional shipping transfer fees when hostilities eventually come to an end. Tourism has stopped, and the hotels cope only with a vulture-like crew of foreign reporters who make their base here for coverage of the rocket strikes in northern Israel.

Compared with the northern part of Israel as a whole, where some one million people have lived in shelters since the rockets started falling, Haifa's suffering might not, at first sight, seem very onerous. But the scenes of destruction, bloodshed, and chaos at the explosion sites of Katyushas, as the Hezbollah rockets are called, are terrifying. One half of a three-story building in the city's Bat Galim district was totally demolished when it was struck by a 220 mm. caliber rocket—the preferred Hezbollah ordnance for Haifa, because it can travel further and carry more explosives. An amateur videographer a few houses away caught the devastation a few seconds after impact as a corpse hung crumpled over in a chair teetering on the blown-out edge of the second floor. The façades of houses across the street and street signs 50 yards away were peppered with clean holes from the warhead's 30,000 ball-bearings, which fan out on impact and can blast clean through thick steel, the better to kill as many civilians as possible.

Reuters / Alex Rozkovsky

An Israeli boy after a rocket attack in Kiryat Ata, near Haifa

Children would normally be frolicking on the beach or at outdoor venues around this leafy, pleasant city. Those whose parents dare to take them out of their houses at all are enjoying "camp," arranged by the municipality, in underground parking garages in the center of town. There, safe from the noise and threat of rockets, they play on air-inflated jungle gyms, watch movies and entertainment shows put on by volunteers and specially trained soldiers, and hope, somehow, that things will return to normal.

"The children are nervous and frightened," says Shiran Levy, 21, a soldier in a special army unit called Nahal, which is trained to deal with civilians. "They don't know what has happened. We teach them the difference between terror against armies and against civilians. The Arab children are very confused. What we try to do here is make them realize that we are all one."

Haifa, whose left-wing political history gave it the nickname "Red Haifa," is famous among Israeli cities for its generally good relations between Arabs and Jews. One Arab municipal worker in an underground "camp" said that the vast majority of the city's Arabs didn't support Hezbollah at all. The mayor of Haifa, Yona Yahav, even quipped to American visitors, "We are lucky that three celebrities never visited Haifa: Moses, Jesus, and Muhammad."

But there is disturbing evidence that some of Haifa's Arabs are rooting for Hezbollah. A freelance photographer who speaks Arabic said that he heard a Haifan Arab tell an Al Jazeera camera crew that he hoped Hezbollah

David Aikman is a former bureau chief for Time *magazine in Jerusalem and author, among others, of* Jesus in Beijing: How Christianity Is Transforming China and Changing the Global Balance of Power.

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would persist in its attacks. A Haifa Jewish resident who placed an Israeli flag on the ruins of a house destroyed by Katyushas watched as local Arabs came up, broke the flag's stick mount in two, and stomped on it. Outside a badly damaged house in an Arab section of the city where three people died in a recent rocket landing, some of the residents complained that the government shelters were insufficient. Others muttered that they didn't mind the Jews, but they thought the trouble was the fault of the "government"—presumably the one in Jerusalem.

The city is protected, in theory, from really big rockets—Scuds, say, or the very large Iranian rocket in the Hezbollah arsenal, the Zelzal—by a Patriot missile battery on a bluff high above the city. At $1.5 million a throw, Patriots are unlikely to be launched against anything smaller than a Zelzal. But the Patriot battery's tracking radar is extremely useful. It sees every projectile coming in from Lebanon, tracks the starting point and the likely trajectory, and alerts the city to activate the siren alarm system. After this sounds, citizens have between 45 seconds and a minute to dash into a shelter. "It is nervewracking," said Tammy, a 21-year-old second lieutenant at the missile battery, "but after a while you get used to it."

Tammy, a career officer, may, but few other people in Haifa are likely to. The city prides itself not only on its measurably better Jewish-Arab relations than other Israeli cities but also on its hitherto peaceful history. Though it suffered a few suicide bombings during the intifada, it was never as much on eggshells about these things as Tel Aviv and Jerusalem. That sense of well-being may be gone forever. Hezbollah's smiley-faced leader Nasrallah warned leeringly this week, "I have a special message to the Arabs of Haifa, to your martyrs and your wounded. I call on you to leave the city."

A possible translation: The Zelzals are coming. If so, the Patriots may indeed be called on to prove their stuff. ♦

The *Kelo* Backlash

What the Supreme Court touched off with its eminent domain decision. BY JONATHAN V. LAST

A year ago, before the Supreme Court issued its decision in *Kelo* v. *New London*, the abuse of eminent domain was practically invisible. Today it's a hot-button issue in nearly every state in the Union—not least in Ohio, where the state supreme court last month unanimously blocked the city of Norwood's attempt to clear out a middle-class residential neighborhood to make way for a private developer to build condominiums, offices, and retail space.

It's worth revisiting the oral argument in *City of Norwood* v. *Joseph P. Horney et al*, which took place before Ohio's high court on January 11. One exchange in particular captures the passions stirred by the controversy over eminent domain.

Attorney Timothy Burke, arguing for the city, explained that the neighborhood could be taken and handed over to the developer because it was deteriorating owing to a "diversity of ownership"—that is, lots of people owned their own homes. Asked by one of the justices why the city government alone should be allowed to control property ownership, Burke replied, "These are the folks who live there. They've lived there all their lives, they've walked those neighborhoods, they've seen how it has changed. They've made a decision." Another justice interjected, "Counselor, couldn't the same argument be made for the homeowners?"

The packed courtroom erupted in laughter. And then applause. After the arguments were concluded, one of the justices could be heard over an open mike asking his colleagues, "Is this as big a crowd as we've ever had?"

In the *Kelo* case in June 2005, the U.S. Supreme Court held, 5-4, that it was permissible for the government to seize property by eminent domain not just for "public *use*," as the Constitution specifies, but for "public *purpose*," including potential economic gain. *Kelo*, that is, legitimized the government-imposed transfer of property from one private party to another, so long as the new owner claimed—he need not guarantee or provide any third-party evidence in support of this claim—that he could generate more tax revenue than the current owner. The *Kelo* decision attracted much attention and prompted state governments to rebuild protections the Supreme Court had obliterated.

Since *Kelo*, 25 states have enacted legislation attempting to reform the use of eminent domain, some with more success than others. (Five state legislatures have not been in session.)

Florida, Georgia, South Dakota, and South Carolina passed the strongest reforms, although each took a different approach. In Florida, Gov. Jeb Bush signed a bill mandating that property seized via eminent domain cannot be transferred to another private owner for ten years. Georgia's reform, signed by Gov. Sonny Perdue, stipulated that economic development was not a "public use" and that for a property to be considered "blighted" it must be a danger to the public's health or safety.

South Dakota's new law went even further, outlawing the use of eminent domain "for transfer to any

Jonathan V. Last is online editor of THE WEEKLY STANDARD.

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private person, nongovernmental entity, or other public-private business entity." South Carolina's legislature passed an amendment to the state constitution that—if endorsed by the voters this November, as expected—will outlaw economically motivated takings. The Institute for Justice, which has led the fight against eminent domain abuse, counts 14 states as having passed serious property-rights protections.

Other states have adopted weaker reforms. A new law in Iowa, for instance—enacted over the veto of Gov. Tom Vilsack—limited the conditions in which blight could be declared and put the onus of justifying the designation on the government. The Ohio senate passed a bill that put a moratorium on the taking of non-blighted property for the purpose of economic development through the end of 2006 and established a legislative task force to look at the state's eminent domain laws. Kentucky has redefined "public use," but also expanded the definition of "blight"—making its reform something of a wash.

Six states—including California and New Jersey, where eminent domain abuse is rampant—have reform legislation pending. But in most of these states, the odds of reforms being enacted are relatively poor.

Other states have actually moved in the opposite direction. Vermont governor Jim Douglas signed a law that purports to limit eminent domain takings, but includes loopholes so broad as to be effectively meaningless. Delaware governor Ruth Ann Minner signed legislation that reinforces the language in *Kelo*, making it harder for residents to find protection even in the local courts.

But New York gets the prize for cravenness. The village of North Hills tried to use eminent domain to seize a ritzy private golf club, Deepdale, and turn it into a public—but expensive—golf course for North Hills residents. Deepdale member Edward D. Herlihy wrote an op-ed about the scheme that was published in the *Wall Street Journal*, and the state legislature quickly passed legislation designed to protect the club. In other words, New York passed eminent domain "reform"—but only for members of an elite golf club.

As states have grappled with eminent domain, a strange politics has emerged. There is no real split between Democrats and Republicans. In some states, it is Democrats who oppose reform. In Connecticut, for example, Democrats in the legislature obstructed attempts to change the law. But in Oklahoma it was Republicans who prevented reform from passing.

As Scott Bullock, an attorney at the Institute for Justice (and the

Michael Ramirez

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lawyer who argued *Kelo* before the Supreme Court), notes: "Republicans who are limited government types are typically good on eminent domain, but those who are tied too deeply to big business are bad. With Democrats, those who are keyed into the rights of the oppressed and the effects of power structures are typically good, but Democrats who are into good government and civil planning are bad on the issue."

Another interesting aspect of the debate has been the lopsidedness of the votes in the legislatures. Where eminent domain reform has passed, it has passed overwhelmingly. This is probably because, as poll after poll demonstrates, there is no grassroots support for the expansive view of eminent domain. There are no citizen or corporate groups lined up to defend public seizures of private property. The only people arguing for them are developers and local politicians. Their strategy is to prevent reform from coming to a vote or, failing that, to dilute legislation in committee.

(A political aside: It may be worth noting that two Democratic presidential hopefuls—Vilsack and New Mexico governor Bill Richardson—vetoed eminent domain reform. Those vetoes may come back to haunt them.)

A lot has changed since the *Kelo* decision came down last year. But some things, sadly, have not changed. The town of New London still insists on taking Susette Kelo's land from her—though on June 30 the town agreed to allow Kelo to keep her little pink cottage and move it to another location in town. Ironically, it's a solution Kelo herself proposed years ago, when the government first came calling.

The irony is that, had the town taken her up on it then, there would have been no legal battle or Supreme Court ruling, and developers across America would still be quietly pushing homeowners around with the help of local governments and eminent domain. Those days are coming to an end. But not soon enough. ♦

Stressed Out Vets

Believing the worst about post-traumatic stress disorder. BY SALLY SATEL

"DEAR DR. SATEL: You are an ideologically constipated coward." So begins one of several dyspeptic communications I've received recently from Vietnam veterans and others.

What provoked their ire was a remark of mine quoted in the *Washington Post* on June 20. Under the headline "Iraq War May Add Stress for Past Vets; Trauma Disorder Claims at New High," the article suggested that the current war is responsible for a surge in disability compensation among veterans' ranks.

While I do agree that current news coverage may prompt anxiety, sleeplessness, and distressing memories among veterans who have led productive lives since leaving Vietnam, I told the *Post* I was "skeptical" that veterans who had functioned well for three decades would now be permanently incapacitated.

My sentiments are unpopular—you "right-wing, bloviating [expletive deleted] pseudo-psychiatrist," wrote another reader on his blog—but my point is actually an encouraging one. That is, even if veterans are undone by news and footage of fighting in Iraq, few are likely to endure a subsequent lifetime of chronic anguish or dysfunction of the kind that requires long-term disability entitlement.

The technical term for such newly triggered incapacitation is "reactivated post-traumatic stress disorder," or reactivated PTSD. The clinical literature describes veterans of World War I, World War II, and the Korean War who, after briefly showing signs of stress disorders in the immediate aftermath of service, led productive lives for decades before breaking down in their sixties or seventies.

Clinical experience with such patients suggests that they can improve with treatment. The same is true of Vietnam veterans. When a traumatic event in civilian life causes a reemergence of PTSD symptoms, their response to treatment has generally been good. "There is no question that reactivated PTSD has been successfully treated," Matthew Friedman, a physician and the executive director of the National Center for PTSD, told me. "We know this from the patients' trauma and treatment histories."

And then there was the reaction to September 11. Veterans Administration medical centers in the New York area and even across the country had braced themselves for an influx of Vietnam and Persian Gulf veterans with reactivated PTSD. Yet researchers from the Department of Veterans Affairs Connecticut Healthcare System at West Haven, writing in the *American Journal of Psychiatry* in 2003, found no increase in the use of inpatient or outpatient mental health services at VA centers among veterans with a diagnosis of PTSD or any other mental illness in New York City or elsewhere in the United States in the six months after September 11. Another research team at the Bronx VA Medical Center did detect a rise but could not establish that it was actually due to the attack on the World Trade Center.

In yet another analysis, the West Haven team reported in 2003 in *Psychiatric Services* that "VA patients with preexisting PTSD were, unexpectedly, less symptomatic at admis-

Sally Satel is a psychiatrist and the coauthor, with Christina Hoff Sommers, of One Nation Under Therapy.

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sion [to hospital] after September 11 than veterans admitted before September 11, and patients who had follow-up assessments after September 11 showed more improvement."

What about after the Persian Gulf war? No data have been published regarding the pattern of compensation awards to Vietnam veterans in the wake of that conflict. It would be interesting to see the data, but unless they showed quite a large bump in claims, they would be hard to interpret, for a couple of reasons.

For one thing, the VA was increasing its funding of services and outreach to Vietnam veterans from 1988 into the early '90s. In addition, evaluating claimants' motivation years after their original trauma is rarely straightforward.

The VA is facing this very conundrum today. According to a May 2005 report from its inspector general, the department is now paying compensation for post-traumatic stress disorder to nearly twice as many veterans as it did just six years ago, at an annual cost of $4.3 billion. The vast majority of the recipients are Vietnam veterans in their 50s and 60s.

But how to distinguish between applicants who can be helped with short-term psychiatric care, those who are seeking a free ride, and those who truly merit the diagnosis of chronic post-traumatic stress disorder (reactivated or not) and thus should receive long-term care and payments of up to $2,300 a month for life?

Among the latter are applicants who have "never been right," as their spouses often say, since their discharge from the military. They never regained their civilian footing and drifted further and further away from their families and communities. By the time they come to a veterans hospital for treatment, they are seen as having "malignant PTSD," that is, severe symptoms of post-traumatic stress disorder complicated by drug and alcohol abuse and other mental problems like depression. They are notoriously challenging to treat.

Other veterans have significant life problems such as alcohol abuse, erratic employment, and domestic violence. But was traumatic exposure in war the true cause? This is not always obvious, yet many VA mental health workers simply assume that whatever problem a veteran has is a product of his war experience.

Thus, to focus on the Iraq war as the primary reason for disability claims by Vietnam veterans is to miss a more complicated picture. More likely, other dynamics play a significant role in generating new claims of disability.

That picture comes into clearer focus when one asks, "Why now?" Today, the average Vietnam veteran is 60, which means any new compensation awards will coincide with the retirement years. Retirement itself, even for people with no latent store of wartime horrors, often leads to feelings of profound dislocation.

This is not surprising. After all, retirement can signify impending frailty and threats to one's identity, which in our culture is largely defined by occupation. It may also denote a loss of purpose, foreclose an important social outlet, or dissolve comforting daily routines. Physical illness and the loss of a spouse may also hit hard at this phase of life.

The good news, though, is that when individuals encountering these difficulties seek care, clinicians report that they tend to do well and are able to find relief through new kinds of activity and revised perspectives on aging and other existential dilemmas.

Will the same hold true for veterans who suffered psychological trauma in wartime? Clinical experience with World War II and Korea veterans with reactivated symptoms—often brought on by retirement—strongly suggests that those who functioned well for the years between their military service and retirement will improve.

For others—those who led rockier lives and long attributed their drinking or concentration and sleep problems to job-related stress—the clinical challenge is greater, though not necessarily insurmountable. "Now sitting at home with 'the wife,' there's not too much camouflage handy," says Grant Devilly, trauma expert at Swinburne University in Australia, who has worked extensively with Korea and Vietnam veterans in his country.

How do these patients fare with treatment? "Quite well," Devilly tells me. But, he emphasizes, there is a marked difference between his country's mental health care system for veterans and ours. "We provide information on a healthier lifestyle, enhance beliefs and attitudes that the veteran can be an agent of change in his own life, and promote skills in linking and relating to family and others," Devilly explains. "In the States," he says, eschewing political correctness, "therapists tend to see vets as PTSD on legs."

Devilly has a point. It is well established that the prognosis for PTSD patients is highly dependent on "post-event" factors, such as expectation of lasting impairment, marital discord, poor physical health, and financial stress. Clinicians in the United States have come to recognize the vast importance of ameliorating "post-event" factors, but change can be slow.

I have often wondered how many of our veterans are never given a full opportunity to recover. Unfortunately, some veterans' advocates and old-guard clinicians remain too ready to see psychological distress as tantamount to incurable PTSD—hence, the quick reach for the disability claims form.

Another veteran who wrote me was offended. "My hope is that if I need to seek professional help in 'coping' with my past, I will be met with compassion, respect, and an open mind instead of cynicism."

That is my hope, too. I am rarely cynical about patients' capacities for renewal, but I worry that my correspondent might fall into the hands of those too ready to cast him as a psychiatric invalid. ♦

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Protecting the Innocent

Even white collar defendants have rights.

BY IRWIN M. STELZER

"INNOCENT UNTIL PROVEN guilty" is one of the few propositions that everyone supports, irrespective of his place on the political spectrum. Well, almost everyone. Some liberals don't need a trial to decide that Scooter Libby should be given an orange jump suit, and some conservatives think it absurd that anyone accused of conspiring to commit a terrorist act should waste our money and time by being given a day in court.

Still, those would-be hanging judges are few and far between. Unfortunately, the massive support for "innocent until proven guilty" no longer guarantees anyone accused of what we call a white-collar crime of a fair shake in terms of procedure, and an ability to resume a normal life if acquitted.

Fortunately, lawmakers have begun to notice. Arlen Specter, chairman of the Senate Judiciary Committee, plans to hold hearings in September to focus on the Justice Department's so-called Thompson Memorandum (named for former deputy attorney general Larry Thompson), which, among other things, directs prosecutors to consider whether a corporation is willing to waive attorney-client privilege when deciding whether to bring criminal charges. Cling to your rights, the memo warns, and we are more likely to bring charges that will bankrupt your company.

Let's hope that Specter's review doesn't confine itself to the obvious problems created by the Thompson memo, and takes a look at the entire set of incentives faced by prosecutors when they're deciding whom to go after.

Start with the earliest step in the procedure—the grand jury that the prosecutor must persuade to indict the person he has in his sights. The potential accused is not allowed to have his lawyer at his side, even though the game is to persuade the grand jury either that the accused did what the prosecutor says he did, or, failing that, to trip him up on some detail so that a perjury indictment will be available as a fall-back position. Little wonder that the saying in the business is that any prosecutor can persuade a grand jury to indict a ham sandwich if he sets his mind to it.

Then there is the famous "perp walk," defined by writer Richard Reeves as "a little conspiracy between police and reporters to produce photos for morning papers and film for evening news." The accused is handcuffed and paraded before the press, who have been tipped off, as he is led into court to be charged with whatever crime the grand jury decides has been committed. Remember, this embarrassed wretch is innocent until proven guilty. Fat lot of good it does him. Add to the embarrassment he and his family suffer the fact that the pool of potential jurors gets its introduction to the person during this fabricated perp walk.

Indeed, there are reported instances of prosecutors being upset when they have paraded the accused into court before the paparazzi had an opportunity to uncap their lenses. So they haul their cuffed charge back out of court for take two.

Rudy Giuliani, the deservedly now-sainted "America's Mayor," made his reputation using this technique. The then-young and unheralded federal prosecutor stormed into the offices of the Kidder Peabody brokerage firm during business hours in February 1987, cuffed two brokers, and, in Reeves's words, "walk[ed] them down Wall Street in an explosion of camera lights."

Never mind that Giuliani didn't have enough evidence to charge these men with a crime. Or that he timed the arrests so that it was too late in the day to arrange bail, forcing at least one of them to spend the night in jail. He was on his way to becoming the mayor of New York, and a highly successful one at that. It might even be that his success as an administrator of a city many thought ungovernable was due to his, er, impatience with procedures, some of which merit a tad more patience than Giuliani was prepared to accord them. In any event, "Innocent until proven guilty" hardly provided the mistreated brokers the sort of protection to which the innocent are entitled.

So clause number one of my Preservation of the Assumption of Innocence Act would outlaw the perp walk. That staged event offends the sense of fairness that is essential to long-term popular support for our system of justice.

Then there is the trial. The complexity of the evidence and the lack of overwhelming incentives for the prosecution to move smartly along suggest that it would be useful to take a hard look at the effectiveness of the Speedy Trial Act of 1974, which states, in part, that "Trial must commence within 70 days from the date . . . [the] indictment was filed, or from the date the defendant appears before an officer of the court." Long pretrial delays and long trials are expensive, very expensive.

Prosecutors, with virtually unlimited taxpayer funding on which to call, know that. In some cases, the accused—not having been proved guilty—know that they have a choice: fight a long battle, the outcome of

Irwin M. Stelzer is a contributing editor to THE WEEKLY STANDARD, *director of economic policy studies at the Hudson Institute, and a columnist for the* Sunday Times *(London).*

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which is uncertain, and even if acquitted leave themselves and their families virtually bankrupt and forever paying off debts to supporters; or agree to plead guilty to some lesser charge, ending the uncertainty hanging over the family during the years of the trial. (Another perversity of the Thompson Memorandum is that it threatens with prosecution companies that advance funds to their employees to hire attorneys.)

So the second clause of my Preservation of the Assumption of Innocence Act would make the right to a speedy trial absolute, eliminating any loopholes in the Speedy Trial Act that might deny the accused an absolute right to a speedy trial should he request it. After all, by the time the grand jury has returned an indictment, and the photographers have had their day on the courthouse steps, the prosecutor will have had plenty of time to gather evidence. A speedy trial just might reduce the imbalance in available resources as the judicial process winds its way to a conclusion.

Then there is the question of just where the accused—remember, still presumed innocent—is to be afforded the fair trial that is his by right. Recently, prosecutors brought three British investment bankers to the United States to face a variety of charges connected with the Enron collapse. Where did they decide to try the case? Houston, of course. Whether or not the jury pool in that city is polluted by the tens of thousands of residents who have lost their jobs, the friends of those whose careers were disrupted, the thousands who chose to invest their pension funds in Enron stock rather than diversify, and the more thousands dependent on those pensioners, I leave to my lawyer friends.

Now, I know that a good judge can do much to ensure that a nonbiased jury is selected from the available pool. Still, what would be the harm in allowing—as clause three in my new law—any defendant who requests a change of venue to be granted his wish? Surely, one reason prosecutors oppose such requests is that they often feel they have some advantage in the venue in which they have chosen to file charges. But we are not dealing here with some sport, in which home-field advantage averages out over a long season of play. We are dealing with a one-game, loser-pays-all contest.

Finally, there is the question of the fairness of the consequences. Even if the defendant is acquitted, he will have paid a horrific price in time, treasure, and reputation. If he is convicted, he pays a more terrible price: Off to jail he goes. But what of the prosecutors? If they lose, they pay no price. Giuliani accused innocent brokers of crimes, failed to convict, and went on to become mayor and who knows what else.

Eliot Spitzer, New York's attorney general, uses the media to level charges against individuals and firms, threatens them with criminal charges that will surely bankrupt them unless they waive their constitutional right to consult with counsel in private, bullies companies into firing their accused executives, and then loses cases he is finally forced to try. He is now headed towards the governor's mansion in Albany and, in the view of his acolytes, from there to the White House.

This is not to say that some of the practices that so rile Spitzer are other than reprehensible. After all, Wall Street investment houses, responding to the conflict of interest intrinsic in their roles as both bankers and brokers, have allowed their brokers to push overvalued shares on customers so as to please their investment banking clients. But when the mere threat of prosecution, combined with public castigation, can cause as much damage as conviction, innocent-until-proven-guilty becomes rather meaningless.

So the final clause of my new law is one designed to get the prosecutors' incentives right. If they lose, the government must restore the acquitted to the financial circumstances in which he found himself at the start of the legal process—perhaps with some portion of the cost of such reimbursement coming, if not directly from the pockets of the individual prosecutors, then at least from the operating budget of their offices. As Professor William Hogan of the Kennedy School pointed out in another context, the first step in good public policy is getting the incentives right.

Understand: Most prosecutors are devoted public servants, working at a fraction of the compensation earned by defense attorneys in high-profile white-collar cases. They are obliged to deploy all of the weapons to which the law and the rules give them access, and therefore can't be criticized for the current unlevel playing field.

Understand, too, that it is important to catch the bad guys. That's why I have always favored jail for price fixers, laws to stamp out the sort of corporate behavior that Sarbanes-Oxley and other good-corporate-governance measures aim to prevent. But it surely is reasonable to consider whether these laudable ends justify all of the means being used to attain them.

There you have it: what my friend Charles Murray would call a "thought experiment." The great legal scholar Kingman Brewster once told a group of economists that if we would consider the law a social science, he would concede that economics is a profession. Good trade, and one that should open the door to lawyers and other social scientists to consider the advantages and, if there are any, disadvantages lurking in my proposed Preservation of the Assumption of Innocence Act.

One thing is certain: The backlash against prosecutorial overreach has enlisted not only Arlen Specter, but also District Judge Lewis Kaplan, who presides over a tax-fraud case being brought against 16 former partners of the accounting firm KPMG. Kaplan ruled in late June that prosecutors violated the constitutional rights of the defendants by pressuring their firm to cut off payments of their legal fees, a common tactic of the feds and Spitzer. The government, said the judge, who is generally regarded as favorable to prosecutors, "let its zeal get in the way of its judgment." Perhaps the time is ripe for a statute limiting zeal and emphasizing judgment. ♦

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"Pro-war, You Get the Door"

The triumph of the Ned Lamont Democrats

By Matthew Continetti

Hartford, Conn.

Shortly after the polls closed on August 8, a miracle seemed to occur at the Joe Lieberman election night party at the Goodwin Hotel here. With 38 percent of precincts reporting, the local television station, displaying the returns alongside an episode of *Friends*, showed Sen. Lieberman ahead by several percentage points in his primary contest against antiwar Greenwich cable executive Ned Lamont. When the news flashed across the four televisions set up in the hotel's atrium—one on either side of the stage where Lieberman would later address the crowd, and two in back, near the open bar—people began to cheer.

It was a sudden reversal. Just moments before, and more or less consistently since the first results had been reported onscreen, Lamont had been in the lead. Now he wasn't. The crowd of Lieberman supporters appeared relieved. A reckoning seemed at hand. The coalition of grassroots activists and progressive bloggers—the so-called "netroots"—that had done so much to elevate Lamont's challenge to national prominence was about to receive its comeuppance.

Lieberman—who less than six years ago, as Al Gore's running mate, came within one Supreme Court justice of being elected vice president—was about to be vindicated. The Democratic Leadership Council's Marshall Wittmann (his entire family in tow on their way to look at colleges in Boston) had already coined a term to describe the feelings of Lieberman supporters, should their candidate prove triumphant. It was an allusion to Daily Kos, the most influential lefty blog and a rising force in Democratic politics. If Lamont lost, Wittmann said with a smile, Lieberman's backers would all share some serious "Kosse-freude." Wittmann seemed pleased at his neologism. Then he paused. "If only we can use it."

Matthew Continetti is an associate editor at The Weekly Standard.

As it turned out, they couldn't. Lieberman's television lead had been a mirage: A technical malfunction had reversed the results onscreen. In truth, Lamont was still ahead, as he would remain all evening.

A little after 11 P.M., Lieberman took the stage and told the crowd that he had called Lamont with his congratulations. His family surrounded him. Conspicuously absent were Lieberman's Senate colleague, Chris Dodd, who had been hanging out in the hotel lobby hours before, and Connecticut attorney general Richard Blumenthal, who had spent much of the evening greeting voters in the hotel atrium. In his speech, Lieberman conceded the Democratic primary, but vowed to run as an "independent Democrat." He appeared fatigued and disappointed and more than a little angry. Which is hardly surprising. The Democratic party, to which he had devoted his life, had just purged him from its ranks.

Lamont's victory was clear. In the end, he won 52 percent to 48 percent in a high-turnout primary election, the margin of victory a little more than 10,000 votes. According to Strategic Telemetry, a political research firm, Lamont won both of Connecticut's major media markets, all but one of the state's eight counties, and three-fourths of the state's municipalities. In all, about 283,000 registered Democrats voted in the primary, which amounts to 43 percent of registered party members in Connecticut. In his post-mortem interviews, Lieberman repeatedly mentioned that only a tiny portion of the general electorate had repudiated him. While this was true, there was no gainsaying the significance of the primary. It took no time at all for the reverberations of Lamont's triumph to be felt throughout the national Democratic party.

Within hours of Lieberman's concession speech, Hillary Clinton's political action committee, HILLPAC, cut Lamont a $5,000 check. One of Clinton's more significant rivals in the upcoming 2008 Democratic presidential pri-

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Getty Images / Bob Falcetti

Lamont victory celebration, flanked by supporters Al Sharpton and Jesse Jackson, August 8

mary, John Edwards, was the first national politician to call Lamont and offer his congratulations. The Democratic election committee chairmen, Rahm Emanuel in the House and Charles Schumer in the Senate, heartily endorsed Lamont the next morning, as did the Democratic congressional leaders, Rep. Nancy Pelosi and Sen. Harry Reid.

Democratic National Committee chairman Howard Dean, whose brother James had been an early advocate of Lamont's candidacy, urged Lieberman to exit the race altogether. Also on August 9, the political action committee of one of the party's most popular and promising figures, Sen. Barack Obama, sent Lamont a check for $5,000. Sen. Barbara Boxer, a Lieberman supporter, endorsed Lamont. At press time, about the only prominent Democrats who still supported Lieberman were Sen. Ken Salazar of Colorado, Sen. Mark Pryor of Arkansas, Sen. Ben Nelson of Nebraska, and a Clinton-era veteran, attorney Lanny Davis. Intriguingly, former President Clinton himself, though he has pledged to support the winner of the primary, was tight-lipped last week on the subject of Lamont's victory.

There were local repercussions, too. On August 9, in the state Democratic party's offices on the third floor of a run-down office building near the Hartford train station, Lamont appeared at a "unity" event alongside Connecticut's Democratic officials, including Sen. Dodd and Attorney General Blumenthal. (At the press conference that followed, Dodd mentioned that he had not spoken to Lieberman since the previous evening.) Each of the Democrats pledged to support Lamont and gubernatorial candidate John DeStefano, the mayor of New Haven. Lamont seemed a little bewildered at all the attention. His eyes were wide. He stood toward the back of the assembled pols, often in someone else's shadow, before taking his turn at the microphone. But when he spoke, he was, as usual, articulate, passionate, and friendly.

Lamont has real political talent. He has kept his composure while being thrust into a strange position. He's been treated as a symbol. Political commentary last week resembled nothing so much as a semiotics lecture of the sort that Lamont might have attended at Harvard, as every political junkie in the country tried to interpret the meaning of the man's victory. The Connecticut primary was the most overanalyzed contest this election cycle. Interpretations ran from the self-congratulatory (on Daily Kos, principal blogger Markos Moulitsas wrote that the "winners" were "democracy and the people of Connecticut") to the turgid, as in this post on the pro-Lamont site *Firedoglake*:

> At some point, the folks who report on politics and the folks who run for office will wake up and understand that bloggers are merely Americans who try to amplify the sentiments of thousands more just like them. And the overwhelming sentiment that I have been hearing for months and months is that people have had enough of the lies, the manipulation, the self-dealing, the egos, the idiocy, the selfishness, and the outright dereliction of duty and lack of accountability from so many in Washington, D.C. in this rubber stamp Republican Congress . . .

There were overly general interpretations of the election, such as this from Sen. Edward Kennedy: "Connecticut voters turned out yesterday in record numbers to change a failed policy in Iraq, to call for health care for all Americans, to fight for a truly independent judiciary, and much more." And there were the widely disparate and somewhat contradictory explanations proffered by the pundit class, which viewed the election, in light of the August 8 primary defeats of Georgia Democrat Cynthia

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McKinney and Michigan Republican Joe Schwarz, as an early indicator of brewing "anti-incumbent sentiment." But others read Lieberman's defeat as a sign that the nation—not just 146,576 Connecticut Democrats—has embraced antiwar politics. In one view, Lieberman's defeat revealed how the public has soured on George W. Bush. "This shows what blind loyalty to Bush and being his love child means," Rep. Emanuel told the *New York Times*.

It was left-wing filmmaker Michael Moore who most dramatically summarized the feelings of the antiwar left about their new champion, the multimillionaire father of three from Greenwich, Connecticut. "Let the resounding defeat of Senator Joe Lieberman send a cold shiver down the spine of every Democrat who supported the invasion of Iraq," Moore wrote in an open letter, "and who continues to support, in any way, this senseless, immoral, unwinnable war." This was a sentiment echoed, albeit more succinctly, by the blogger "Dadhusker," commenting on *Firedoglake*: "Pro-war, You get the door!" Sometimes the simplest explanation is best.

Senator Dodd was right when he told reporters at the "unity" event in Hartford that the previous night's primary was "about the people we seek to represent," and that politicians "have an obligation to the voters of the state" to represent them as fully as possible. Simply put, the voters in Connecticut are antiwar. Three-fourths of Connecticut residents, regardless of political identification, think the Iraq war was a mistake. According to the *New York Times*/CBS News exit poll, 61 percent of all Democratic primary voters "strongly" disapproved of the war in Iraq, with 69 percent supporting a withdrawal "soon."

Among Lamont voters, 43 percent said the main reason they voted for the challenger was his opposition to the war. Another 24 percent said their main reason was that Lamont "would oppose Bush." In Democratic circles, the idea that the Iraq war is a "disaster" has become axiomatic, like the assertion that the sky is blue. At the Lieberman party on election night, I met several people who opposed the war but still voted for Lieberman. "He's done a lot of good things," one man, who claimed to have "known Joe" for more than two decades, said. "So he does one bad thing? Waddaya gonna do?"

For many Connecticut Democrats, Lieberman's perceived closeness to Bush on the war in Iraq was the one bad thing that could not be forgiven. But it was not the only bad thing. The senator has been increasingly at odds with a newly energized sort of Democrat. Exit polling data reveal that Lieberman and Lamont drew on different party constituencies. Fifty-five percent of the primary voters surveyed described themselves as either "very" or "somewhat" liberal. Those liberals voted for Lamont, while Lieberman won among "conservative" Democrats. And the split was not simply ideological.

As others have pointed out, voting patterns broke along education and class lines. Fifty-five percent of Lamont voters had at least a college degree, while 59 percent of Lieberman voters described their education level as "high school or less." A majority of Lamont voters had incomes of $100,000 or more, while a majority of Lieberman voters had incomes under $50,000. Looking at the geographic results, researchers at Strategic Telemetry found that support for Lamont was strongest in places with high median incomes, high house prices and high percentages of owner-occupied housing, white-collar workers, and children in private schools.

That is not all that Lamont supporters share. Conversations with left-wing bloggers and other pro-Lamont activists reveal a suspicion of orthodox or evangelical religion, a curious fetishization of science and technology, opposition to the war in Iraq, of course, but also suspicion of the Bush administration's conduct of the war on terrorism in general, a preference for "merit" over "privilege," and a habit of self-affirmation that borders on the parodic. "Our well-informed and highly educated electorate," state Democratic party chair Nancy DiNardo told reporters in Hartford last week, "has once again proved themselves by nominating Ned Lamont to be the Democratic candidate for Senate."

If all this sounds familiar, it is because the people supporting Lamont closely resemble those who supported Howard Dean. Lamont may be only the most recent iteration of Deanism, but so far he is also the most successful, and he might turn out to be more successful still. What makes the Lamont victory significant is not its effect on the 2006 election. It signals the emergence, or reemergence, of a political bloc of highly sophisticated, educated, and polarized voters. And this voting bloc wishes nothing less than to assert control over the Democratic party.

Because Lieberman decided to run in the general election as an independent, much in this contest has been left unsettled. One thing that has been settled is that the senator ran a sorry primary campaign. He misjudged the seriousness of Lamont's challenge until it was too late; he signaled that he would run as an independent more than a month before primary day; his team handled the press poorly. The campaign let it be known that it was backing down from its Get Out The Vote efforts the weekend before August 8, then said that wasn't

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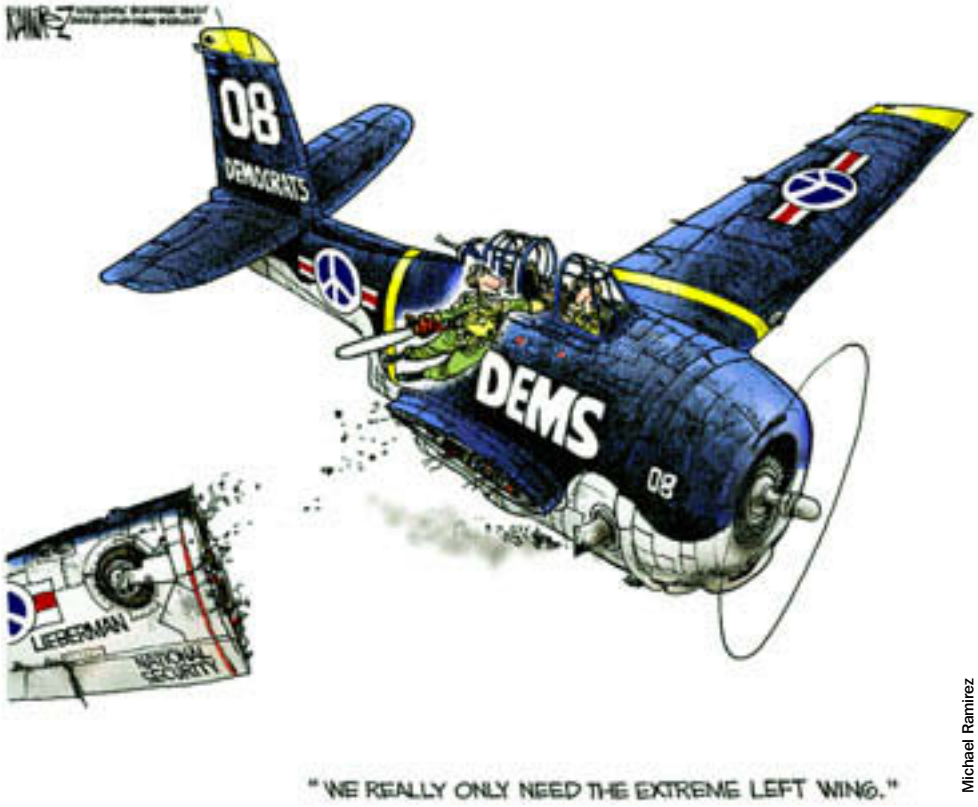

Michael Ramirez

call it what it is over here. It's the president's personal and highly political RED ALERT panic attack, because that's what the Republicans do when they're in trouble, especially with this kind of news front and center. There's a reason Bush is crying RED ALERT, and it's because it's all he's got. . . . *Let's also remember that it was the Brits that foiled today's attack*.

The netroots helped Lamont in the Democratic primary, but they could come back to haunt him. There have been signs of this in recent weeks. One is the doctored image of Lieberman in blackface posted on the *Huffington Post* by movie producer and blogger Jane Hamsher. The Lamont campaign was forced to distance itself from Hamsher, a longtime supporter. Another occurred in the hours leading up to the primary, when Lieberman's website crashed. The Lieberman campaign blamed Lamont-supporting hackers. Lamont offered to repair the website and said that any attempt to hold his campaign responsible was guilt by association. Others called it a case of being judged by the company one keeps.

quite true. It suddenly cancelled Lieberman's last two events. I showed up at Anthony Jack's restaurant in Southington expecting the Joe-mentum bus to show up, only to find that the restaurant was closed for the day.

Lieberman has sought to correct those mistakes. He has brought on a new team, including veteran aide Dan Gerstein. He plans to run a national-security campaign that contrasts the two candidates' approaches to the war on terror. The new activist group Vets for Freedom will weigh in on Lieberman's behalf to highlight the cost of withdrawal from Iraq and timidity in the war on terror. The group will place a full-page ad in support of Lieberman, in the August 14 *Hartford Courant*.

Lieberman's effort will stress the dangers of dovishness. He should have plenty of material from which to draw. Like clockwork, less than 24 hours after Lamont's victory, British authorities announced the break-up of a massive plot to bomb commercial airliners traveling to the United States. Lieberman will only be helped if he makes use of what some of Lamont's supporters had to say about the plot. Here, for example, is blogger and former Miss America contestant Taylor Marsh, a frequent contributor to the liberal-left *Huffington Post*, on her own website:

> Everyone is talking about the Brits thwarting a terror attack. But two days after the Lieberman loss you've got to

In the end, none of this may matter. While independent candidates have won in Connecticut before, there is little precedent for a candidate winning after losing his party's primary. It may also be, as Eli Pariser, the executive director of the left-wing MoveOn Political Action Committee, wrote in the August 10 *Washington Post*, that the era of "triangulation" is over: No more Democratic politics that seeks to co-opt conservative issues.

"The policy of seizing the political middle ground no longer makes sense in an era when any attempt at bipartisanship is understood as a sign of Democratic weakness and exploited accordingly," Pariser wrote. "With triangulation passing, a new era of bolder, principle-driven politics can begin." Later in the piece, Pariser concluded: "People don't want Democratic politicians whose grotesquely nuanced positions on issues make their utterances incomprehensible or meaningless or both. They want a new direction." What is by no means certain is that this new direction leads to victory. ♦

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How to Prevent a Civil War

The increase of sectarian violence in Iraq is now a greater threat than the insurgency

By Michael Eisenstadt

Sectarian violence has now surpassed the insurgency as the main security challenge in Iraq. Quelling this violence—which threatens to derail that country's troubled political transition, devastate the Iraqi people, inflict lasting harm on the country's social fabric and economy, erode flagging U.S. domestic support for the war effort, and heighten communal tensions throughout the Middle East—is therefore essential if the United States is to achieve its minimal objectives in Iraq.

Because the Sunni Arab insurgency and the sectarian violence it has spawned are driven in part by political grievance and ambition, it was hoped that the formation of a broad-based "national unity" government that included representatives of the Sunni Arab community would help stanch the violence. It is now clear, however, that a strategy of political co-optation will not, in and of itself, bring an end to either the insurgency or the country's sectarian bloodletting, which show every sign of intensifying.

Accordingly, there is a need for interim measures to contain Iraq's sectarian violence. Identifying the factors that give rise to and perpetuate such conflicts—drawing on insights from insurgencies and civil wars elsewhere, and proposing practical steps for dealing with them—will be critical to U.S. and Iraqi efforts to contain, if not reduce, the violence. So what is to be done?

⋆ *Contain the Insurgency*. The insurgency is the driving force behind Iraq's sectarian violence; containing it is therefore a prerequisite for curbing the sectarian bloodletting. Here, Malaya and Kenya offer lessons for Iraq. The fact that the Communist insurgency in Malaya (1948-1960) was largely rooted in that country's ethnic Chinese minority, and that the Mau Mau rebellion in Kenya (1952-1956) drew support mainly from the Kikuyu tribe, helps explain the failure of these insurgencies. Ensuring that the insurgency did not spread beyond minority communities was a key element of Britain's successful counterinsurgency strategy in Malaya and Kenya.

In Iraq, the Sunni Arab insurgency has mobilized only a fraction of the hundreds of thousands of aggrieved Sunni Arabs with military or paramilitary training, and has little appeal beyond that community. Should the insurgency successfully exploit this untapped potential, or forge tactical alliances with aggrieved members of other communities, it could greatly increase its capacity for violence. Unfortunately, the creation of a political alternative to armed struggle has not prevented an increase in sectarian polarization or the rise of extremist Shiite elements, such as the Mahdi Army led by the cleric Moktada al-Sadr, now engaged in a low-level insurgency of their own against coalition forces. It remains to be seen whether U.S. ambassador Zalmay Khalilzad can make further headway toward co-opting the Sunnis without turning the Shiites into open enemies of the United States, and whether the sectarian violence has reached a point at which it is self-perpetuating and thus much more difficult to contain.

⋆ *Mitigate the Consequences of "Sectarian Cleansing."* Victims of ethnic or sectarian cleansing in civil-war-torn countries such as Lebanon (1975-1990) and Bosnia (1992-1995) who are forced to leave their homes and move to new neighborhoods or new parts of the country often cannot continue working at their old jobs. Some may find employment with communal militias and parties in their new places of residence. This provides many of these victims with the means to act on their desire for revenge against their former neighbors, adding fuel to the conflict. In some cases, these individuals may lead forays of militia death squads into their old neighborhoods in order to settle personal scores, or to seek retribution against former neighbors who belonged to "enemy" parties or militias.

Michael Eisenstadt is a senior fellow and director of the military and security studies program at the Washington Institute for Near East Policy.

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To avert such a dynamic in Iraq, efforts to create legitimate employment outside the militias should be focused on the tens of thousands of displaced breadwinners. (According to a recent Iraqi government estimate, more than 30,000 families and 182,000 individuals have been displaced as a result of the most recent wave of sectarian violence during the past six months.) All such efforts, however, are extremely difficult to implement in Iraq under current conditions. The growth in sectarian violence may indicate that a cycle of revenge-motivated killings is already in motion.

⋆ *Protect At-Risk Populations*. While much of the violence visited upon civilians during civil wars is random in nature, it is not without its own cruel logic and is often perpetrated as part of a deliberate strategy. Atrocities and massacres, for instance, are most common in contested areas and are conducted to secure these areas against potential fifth columnists through ethnic or sectarian cleansing (as in Lebanon and Bosnia) or to deter civilians from cooperating with the enemy (as in the Algerian civil war of 1992-2000).

In Iraq, mixed neighborhoods and villages and those close to ethnic or sectarian fault-lines have been hardest hit by sectarian and ethnic violence and the forced displacement of populations, and thus are at greatest risk. Much of the current violence, however, is relatively low level and covert, occurring under the radar of coalition forces, and thus very hard to prevent.

If, however, violence were to escalate to involve larger groups of insurgents, militiamen, or government forces, it might be possible for U.S. forces to intervene with ground forces, attack helicopters, or gunships. At the very least, a clear willingness to use such means could keep the violence below a certain threshold. It might also be possible, in certain places, to prevent attacks on civilians by using population or traffic control measures (checkpoints and roadblocks) to interdict the movement of violent mobs and militia convoys. For instance, the Mahdi Army frequently buses its militiamen from one place to another. In this way, coalition forces might create "firebreaks" to contain or slow the spread of violence.

⋆ *Prevent the Breakup of the Iraqi Security Forces*. During the Lebanese civil war, some units of Lebanon's armed forces disintegrated while others stood down and returned to their barracks in the face of spreading communal violence. As a result, militias proliferated to fill the security vacuum. The neutralization or disintegration of the Iraqi army and police under the pressure of spreading sectarian violence would probably mark the death knell of U.S. efforts to transform Iraq into a viable, functioning state. This must be averted at all costs.

Most army units consist largely of Shiite or Kurdish personnel, with a small but significant number of Sunni Arab commissioned and noncommissioned officers. The Iraqi army is therefore unlikely to disintegrate should Sunni-Shiite or Arab-Kurdish violence intensify, though some individuals might desert in order to fight with sectarian or ethnic militias. Desertions of key personnel could, however, significantly degrade the capacity of some units.

The army (and police) are much more likely to disintegrate in the event of intracommunal violence among Shiite or Kurdish groups. Intracommunal conflict among former allies has been a fairly common feature of civil war settlements, and in Iraq, intracommunal violence could have fatal consequences for the security forces. The implication here is that U.S. diplomats need to focus on managing or resolving not only the conflict between Sunnis and Shiites—but also the various latent conflicts *among* Kurds and *among* Shiites. While the United States may be well positioned to mediate among the major Kurdish factions, regional actors such as Iran may be better suited to mediate among the Shiites, although it is not clear that Tehran would have an intserest in doing so.

⋆ *Make the Security Forces Part of the Solution, Not Part of the Problem*. Some have pointed out that the security forces contribute to Iraq's sectarian violence because of the ethnic or sectarian make-up of the army and police, the influence of sectarian militias in some police organizations, and the participation of Ministry of Interior "death squads" in attacks on Sunni Arabs. No doubt there is a great deal of truth to this claim, although this is much less a problem with the army than with the police—which is badly in need of reform, training, and a professional ethos. Reform of the Interior Ministry is a particularly urgent task, for an effective police force is often key to success in counterinsurgency because of the ability of the police to obtain vital intelligence about the insurgents from the civilian population.

More important than the composition of the security forces, however, is their comportment vis-à-vis the civilians with whom they interact. In many places, civilians are desperate for an end to rampant crime, insurgent violence, and official corruption, and would be greatly relieved if the security forces could bring this about—regardless of the ethnic or sectarian make-up of the units involved. In the near term, the key to dealing with this problem is the professionalization of the security forces—particularly the police—and more extensive mentoring by U.S. personnel, and not the ethnic or sectarian rebalancing of the forces, which is not likely to occur until much larger numbers of Sunni Arabs join them.

⋆ *Halt the Drift Toward Chaos*. The fragmentation of political and religious authority may often accompany civil violence and complicate efforts to manage and resolve such conflicts. For instance, during the second Palestinian intifada (2000-2004), the emergence of new counter-elites unre-

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sponsive to the authority of the dominant Fatah movement and the leadership of the Palestinian Authority—such as Fatah's "young guard" and the Popular Resistance Committees—made it much more difficult to control violence in the streets of the West Bank and Gaza.

There are worrying signs of similar developments in Iraq. The rise of Shiite militias operating within or outside the security forces (such as the Mahdi Army and the Badr Organization); the formation of Shiite death squads made up of Ministry of Interior employees; and the emergence of a new generation of younger, more radical Shiite clerics unresponsive to the authority of the traditional Shiite religious establishment, all portend the fragmentation of political and religious authority in Iraq that could accelerate the trend toward chaos and violence.

To counter this trend, coalition forces should accelerate the embedding of police training teams in Iraqi police units (the Iraqis tend to behave better when coalition personnel are around), coalition and Iraqi security forces should intensify current efforts to identify and prosecute members of death squads, and they should clamp down on illegal financial activities that benefit militias—such as the diversion and sale of oil and refined petroleum products. Likewise, Provincial Reconstruction Teams should not disburse funds to individuals or entities associated with militias and radical clerics.

Although a descent into chaos is rightly to be feared, few if any civil wars pit every man against his neighbor; rather, the carnage tends to be the work of relatively small bands of well-organized criminals, thugs, and militiamen (sometimes supported by local police and conventional military forces) who victimize civilians with the tacit or open encouragement of hostile neighbors, cynical politicians, extremist parties, or warlords. This seems to be the case in Iraq as well.

The challenges of humanitarian intervention in civil wars, though not trivial, should not be exaggerated. A well-equipped, professional military should be able to deal with criminals, thugs, and militias—provided that it has enough troops on the ground and that it has trained for this particular type of conflict. In fact, the U.S. military has operated successfully against militias in Iraq on several occasions (most notably, the Mahdi Army in April and August 2004). Nevertheless, supporting a humanitarian intervention would greatly tax already overstretched American forces. Moreover, intervening on behalf of civilian victims on both sides of the Sunni-Shiite sectarian divide could severely strain relations between the United States and key Shiite politicians and parties.

⋆ *Dismantle the Conflict Economy*. Civil conflicts often give rise to economic activities whose purpose is to finance arms purchases and pay the salaries of combatants. This creates a vested interest in the perpetuation of the conflict among those who benefit from these activities (drug cultivation in Lebanon and Afghanistan and the trade in "conflict diamonds" in Angola, Sierra Leone, and the Democratic Republic of the Congo). In Iraq, criminal elements, many with ties to militias and insurgent groups, are involved in the kidnapping of Iraqis and foreigners, the smuggling of oil, and the funding of these groups with the proceeds. A good first step toward dismantling Iraq's conflict economy would be to crack down on kidnapping rackets and the diversion of oil and refined products by militias and insurgent groups, which costs the Iraqi government billions of dollars a year in lost income.

⋆ *Halt Foreign Assistance*. Civil wars often have a transnational dimension, in that neighboring states may provide political, economic, and military support to one or more warring parties. Thus, efforts to halt civil wars often require the cooperation of neighbors. In the former Yugoslavia and Afghanistan, for example, regional groupings were established to help broker negotiated settlements and to monitor their implementation—namely, the Balkan Peace Implementation Council, created following the 1995 Dayton Peace Agreement, and the Six Plus Two forum for Afghanistan, created by the United Nations in 1998.

Iraq is no exception; the violence is being fueled in part by neighbors. Because both Syria and Iran would probably like to see the violence in Iraq continue to simmer in order to keep the United States tied down there, coalition and Iraqi efforts to halt foreign assistance to the combatants are likely to consist mainly of unilateral measures on the Iraqi side of the border.

Efforts by coalition and Iraqi government forces to interdict the flow of foreign jihadists through Syria to the Sunni Triangle have apparently been somewhat successful, but a similar effort to interdict insurgent smuggling routes and "rat lines" along the border with Iran needs to be undertaken. The length of the border and the paucity of Iraqi border security personnel and coalition troops will greatly impede this task. It remains to be seen whether proposed talks with Iran—currently on hold—will produce positive results in this area.

⋆ *Conclusions.* As the sectarian violence in Iraq increases, the United States cannot afford to be seen standing by while Iraqis slaughter each other; this would further undermine its credibility in Iraq and the region and encourage neighboring states to actively support one side or another, making a bad situation worse. The United States has both a moral obligation to act, and an interest in doing so, when U.S. forces can save innocent lives, and when it has a reasonable chance of limiting or containing the violence. The recent U.S. decision to send thousands of extra troops to Baghdad—the site of most of the sectarian bloodletting of

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the past few months—is thus a step in the right direction.

On the other hand, there is a significant danger that U.S. intervention will further undermine domestic support for an increasingly unpopular war; further stress an already overstretched force; and jeopardize the tacit U.S. alliance with the Shiites, which has underpinned U.S. policy in post-Saddam Iraq. Finding a way to contain the sectarian violence and to balance these latent tensions in U.S. Iraq policy may prove as difficult for Washington as containing the insurgency has been. But it is essential if the United States is yet to achieve an acceptable outcome in Iraq—and if Iraq is to have a future as a viable state. ♦

The Fantasy World of International Law

The criticism of Israel has been "disproportionate"

By Jeremy Rabkin

At the outset of the current war in Lebanon, governments in Europe protested that Israel's response was "disproportionate." The U.N. human rights commissioner, Louise Arbour, endorsing this claim, spoke darkly of Israeli "war crimes." I happened to be at a conference in mid-July where there were a number of military lawyers. I asked one of them, who teaches military law at one of the service academies, what this talk about "proportionality" actually meant. The answer was prompt and succinct: "It means they don't like Israel."

From the perspective of international law, it doesn't take much to condemn Israel. Year after year, for example, the old Human Rights Commission devoted more time to condemnations of Israel than to any other topic, while often ignoring atrocities elsewhere. That was one reason the U.N. abolished the commission last year, substituting a supposedly more sober Human Rights Council. In its first year, the new council decided to forgo other distractions and devote all its country-specific resolutions to condemnations of Israel.

Still, it is worth pausing over the argument, because it reveals quite a bit about the way standards for military action are now treated by specialists in international law. For most European countries, these standards are literally academic—since few European military forces can imagine engaging in anything close to actual war. But the trend in opinion in this area will have implications for the handful of military powers remaining—of which, come to think of it, Israel is not the only one.

Start with the source of the relevant standards. The two treaties most often cited by scholars are Additional Protocol I to the Geneva Conventions (1977) and the Statute of the International Criminal Court (1998). The Additional Protocol was the first treaty attempting to set standards for military tactics and the overall conduct of war since the Hague Conventions of 1907. (The 1949 Geneva Conventions dealt with specialized matters such as the treatment of war prisoners, sick or wounded combatants, and civilians in occupied territories.) Relevant provisions of the ICC statute for the most part simply recite standards set down in the Additional Protocol.

Both treaties contain constraining provisions that might seem relevant to Israel's military actions—especially to the bombing that could have been expected to cause extensive casualties or severe hardships to civilians. The most obvious difficulty with citing these standards, however, is that Israel is not a party to these treaties. Nor, as it happens, is the United States.

The failure of Israel and the United States to ratify these measures ought to detract a good deal from their relevance, especially since the failure was not a matter of

Jeremy Rabkin teaches international law at Cornell University and is author, most recently, of Law without Nations? Why Constitutional Government Requires Sovereign States *(Princeton).*

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pique. Whereas previous Geneva Conventions had protected uniformed, disciplined armies that complied with the laws of war, the Additional Protocol sought to extend protection to guerrilla forces and terrorist groups. Yasser Arafat's PLO was granted observer status at the negotiating conference and expressed satisfaction with the results, especially the embrace in the very first article of the treaty of "conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes"—understood by everyone in 1977 as a reference to Israel, given the recent U.N. General Assembly resolution equating Zionism with "racism." The Reagan administration, rejecting U.S. participation in this treaty, warned that the treaty would give special protections to terrorist groups.

Does a treaty have any claim on a state that has not ratified it? Scholars insist that even states that have not ratified a particular treaty may still be bound by its terms if they have entered into "customary law" or "usage." But it would be very hard to show that Israel's targeting in Lebanon was in clear violation of standards that are otherwise widely respected. (They certainly weren't by Russia in Chechnya or NATO in Kosovo.) What scholars assume is that "custom" can be derived not from what states actually do but from what diplomats say. Counting that way, you can amass quite a lot of "votes" on the side of the Geneva and ICC standards, because most countries have ratified them—and most have no contrary practice because they have not actually been at war. In effect, claim to these treaties as "international law" is to claim that a majority of the General Assembly can legislate for the world.

If you view the relevant standards in this light, then it may seem quite reasonable that these standards should still apply to one side in a war, even when its enemy defies them. The traditional view, reflecting the logic of war, was quite the opposite. The Hague Convention on the Laws of War on Land (1907) carefully stipulated at the outset that its standards would "not apply except between contracting powers"—that is, states adhering to these standards—"and then only if all the belligerents are parties to the Convention." The signatories were not even willing to be bound by these rather general constraints against a power that might gain advantage by acting in collusion with a nonsignatory.

The Hague standards were negotiated, for the most part, by a circle of European governments thinking quite concretely about what constraints they could accept in what circumstances. They were not willing to accept constraints against enemies that did not. No one engaged in any hand-wringing at the Hague over the fact that in recent colonial wars—by the British in South Africa, the Americans in the Philippines, the Germans in Southwest Africa—Western armies had not complied with standards set down in the 1899 version of the Hague Convention.

By contrast, the scholars who rely on the Additional Protocol (like its drafters) imagine a world in which the actions of one side in a war make no difference to the obligations of the other. So, for example, the Additional Protocol admonishes that signatories should, "to the maximum extent feasible . . . avoid locating military objectives within or near densely populated areas" (Art. 58). But the language of other provisions (such as Art. 57, avoiding "incidental loss of civilian life, injury to civilians and damage to civilian objects") suggests that failure by one side to respect this obligation has no effect on the other. So if one side hides its missile launchers in civilian neighborhoods—or in the schools, hospitals, and religious and cultural sites supposed to receive special protection—the other side is still obliged to avoid attacking. In other words, by a literal reading, the Additional Protocol rewards those who use civilians as human shields. That is consistent with provisions granting protected status to guerrilla and terrorist forces, embracing those who defy the laws of war by blending in with—and thereby endangering—the surrounding population.

If you can get past these objections, it may then seem quite easy to invoke various provisions in the Additional Protocol to show that major Israeli actions were "disproportionate" to what even critics concede was a legitimate Israeli claim to undertake some sort of defensive action. Among other things, the 1977 Protocol admonishes that when "several military objectives" may provide "a similar military advantage," states must choose the attack "which may be expected to cause the least danger to civilian lives and to civilian objects" (Art. 57).

Yet there is something quite strange in this line of argument, too. The relevant provisions in the Protocol deal with "military advantage"—that is, tactical aims. The real issue is strategic: What would bring "victory," or how should "victory" be defined? At the strategic level, if you measure the response by the scale of the provocation, you reward aggressors by allowing them to control the scale of the response. Object to Germany's sinking of passenger ships in the mid-Atlantic? We might retaliate by seizing some German ships in U.S. ports. Object to Japanese attacks on U.S. warships in Hawaii? We might even the score by attacking a comparable number of Japanese ships somewhere else.

What is missing, of course, is the thought behind the old-fashioned expression "an act of war": Germany's resort to unrestricted submarine warfare in 1917 and

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Japan's attack on Pearl Harbor were seen as provocations that had to be met by all out war. The point isn't that we necessarily had to fight an inhumane war—though a war that culminated in the nuclear devastation of two Japanese cities was not exactly fought by Hague standards (as even the blockade of food shipments to Germany in the First World War departed from Hague standards). The larger point is that once you get into something called "war," you are trying to impose your will on the enemy and not simply engaging in tit for tat.

It is one thing to engage in punitive raids, though even punitive raids make sense only if the response can be more painful than the initial attack. Otherwise, a very constrained response risks inviting future attacks at the enemy's discretion. At some point, a full war goes beyond such skirmishing. War is, in effect, a struggle over the future relations between the warring parties and which side's standards for that future will finally prevail. And as the world wars proved, war is sometimes a quite effective answer to the original dispute. Nobody has been troubled by Japanese or German aggression in many decades.

There are all sorts of complications, of course, when "war" involves a terrorist force, like Hezbollah, which is not even a state—though it is clearly an instrument of state policies formulated in Damascus and Tehran. It may well be that Israel's response will not, in the end, enhance its own security. But that is, at the strategic level, a risk in every war. More often than not, one side emerges from war worse off than if it had not fought in the first place. That is what makes war decisive—and also less common than small skirmishes.

The relevant question, if you want to be legalistic, is not whether resort to war is sound policy but whether it is within the rights of legitimate state conduct. The question is whether Israel's actions are within the range of what our own Declaration of Independence (which was, after all, justifying resort to war) called "things which independent states may of right do." The relevant legal question, to put it more precisely, is whether standards can be changed as the result of treaties that are rarely invoked, less often observed, and not ratified by the parties to the actual conflict.

Condemning the scale of Israel's response does make some sense, as everything else argued by the critics makes some sense, if you view the issues in the light of domestic analogies. We allow private individuals to use force against, say, someone who breaks into a private home—but no more force than is required to repel or disable the intruder. Some states do allow homeowners to use guns to defend themselves, even if the resulting act of self-defense proves fatal to the intruder, but other states impose more restrictions on "defensive gun use" (including restrictions on access to guns in the first place).

Whatever one might say about moral claims to self-defense, most of us, most of the time, acknowledge that the binding law is the law enacted by the state legislature, even though the legislators who voted for that law may be disproportionately from low-crime districts and lacking therefore an adequate understanding of what is really at stake for residents of the most dangerous areas. Homeowners are not exempted from the relevant state law just because they disagree with it. In the domestic setting, we accept that the right to self-defense is determined by a constitutional structure, and the rules are the rules, including the rules for determining the rules.

So it might seem entirely reasonable to condemn Israel's actions, if you think the Lebanon war takes place in the realm of what German commentators, following Jürgen Habermas, call *Weltinnenpolitik*—global domestic policy. What Luxembourg and Iceland and New Zealand and other nice countries (and their coalition partners in somewhat nastier countries) view as the proper standards will be the proper standards, and Israel must adhere to them, even if its enemies don't, because rules are rules and preserving the rules is more important than achieving any particular strategic objective of any particular state.

It all makes sense, in a way—particularly if you live in Luxembourg and never have to give any thought to your own defense, because others will see to it for you. Lots of Europeans like to think of themselves as citizens of greater Luxembourg. It happens not to be a luxury that Israel can afford, living in a region where some of the strongest states—notably Iran—are dedicated to its destruction. If Israel could not defend itself, what international authority would it call to provide protection from outside? The U.N.? That is the very body that established the "international force" in Lebanon that has, in effect, operated as Hezbollah's chaperone for the past quarter century, looking the other way as terrorists acquired a vast arsenal of missiles. Asking Israel to rely on the U.N. for its protection makes sense only if you think Israel has no more right to defend itself than the majority of U.N. members think it ought to have. This is not a very reassuring notion for Israel, given the U.N.'s record.

The United States is, in all sorts of ways, in a different position from Israel. What the two have in common, however, is not just many of the same enemies. The United States has a similar stake in resisting the assumptions that have come to prevail in much of the legal commentary on Israel's tactics in this war. For some reasons that are similar to Israel's and some that are almost the opposite, the United States also cannot regard its military options as if it were merely a greater Luxembourg. ♦

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End of a Supreme Court Blunder?

The exclusionary rule hangs on by one vote

By William Tucker

In June, the Supreme Court decided that Detroit police did not violate the Fourth Amendment rights of a drug dealer named Booker Hudson when they entered his home in August 1998 only five seconds after announcing their presence at his door. Hudson's lawyers argued that—although he had a loaded gun hidden in the couch next to him—police should have waited to enter for at least 20 seconds after knocking. The four dissenting justices in *Hudson* v. *Michigan* complained that the decision repealed a "knock and announce" rule that has been part of common law since the 13th century. Newspapers around the country echoed their lament.

Justice Scalia, writing the majority opinion, took aim at a rule of more recent vintage—the "exclusionary rule," enshrined by the Supreme Court only a generation ago, which holds that evidence must be excluded from trial if it has been obtained improperly. Dismissing key evidence on such a minor point as the number of seconds police wait at the door is the equivalent of giving the defendant a "get-out-of-jail-free card," wrote Scalia. The suppression of evidence should be "our last resort, not our first impulse."

Unfortunately, Justice Anthony Kennedy, who otherwise sided with the majority, did not endorse Scalia's rejection of the exclusionary rule. In a separate opinion, Kennedy called this rule "settled" and "not in doubt," but held that in this particular case the police did not overstep. Scalia's frontal assault on the exclusionary rule, though, now has the support of four justices. Before long, this judge-invented rule that redefined American law enforcement over the past half-century may reach the end of its long run.

Its origins were certainly humble. On May 23, 1957, three Cleveland police officers came to the door of Dollree Mapp, who was suspected of harboring a suspect in a bombing case. (The bomb had gone off on the front porch of Don King's house—a warning to the future boxing promoter from rivals in the numbers racket.) Mapp called her lawyer, who told her not to allow the police to enter without a warrant.

The officers departed. Three hours later they returned with reinforcements, waving a piece of paper in front of her face and saying it was a warrant (whether it was remains in dispute). Mapp grabbed the paper and stuffed it in her dress. The police wrestled it back and put her in handcuffs. Her lawyer arrived but was not allowed to speak to her or enter the house. For the next few hours, police ransacked Mapp's home but didn't find their fugitive. In the basement, however, they did discover a suitcase that Mapp said belonged to a former tenant. Inside were four pamphlets, a couple of photographs, and a pencil doodling alleged to be obscene. Mapp was convicted of possession of pornographic material and sentenced to two to seven years in prison.

When Dollree Mapp's case came before the Supreme Court in 1961, search and seizure was not even the issue. Her conviction was appealed as a challenge to Ohio's strict pornography laws, and that was the subject of oral arguments. But President Kennedy had just elevated his secretary of labor Arthur Goldberg to the bench to replace Felix Frankfurter, and for the first time the liberal faction led by Chief Justice Earl Warren had a majority. Without any preliminaries, the new majority seized on *Mapp* v. *Ohio* as an opportunity to do something it had contemplated a long time—extend the federal exclusionary rule on search and seizure to state criminal cases.

The Fourth Amendment to the Constitution reads as follows:

> The right of the people to be secure in their person, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation,

William Tucker is author of Vigilante: The Backlash Against Crime in America.

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and particularly describing the place to be searched, and the persons or things to be seized.

Until the 20th century, however, the Bill of Rights was interpreted as applying only to the federal government, not the states. This limited the scope of the Fourth Amendment, since most criminal investigations are conducted at the state and local level.

The exclusionary rule was adopted for federal cases in a 1914 decision, *Weeks* v. *United States*. Fremont Weeks had been convicted of participating in a lottery through the mails, based on evidence seized from his Kansas City home without a warrant. Investigators had borrowed a key from a neighbor and searched his house, seizing evidence and other property. Weeks sued to have his property returned and the evidence excluded from the case. The Supreme Court, breaking with common law tradition, ruled in his favor. The "exclusionary rule" was promulgated as a remedy to deter violations of the Fourth Amendment. Benjamin Cardozo, then a New York state judge and soon to be on the Supreme Court, spotted the flaw right away: "The criminal goes free because the constable has blundered," he famously wrote. (The traditional remedy for a warrantless search was a civil suit for damages. See Stanley C. Brubaker's discussion in these pages, "The Misunderstood Fourth Amendment," March 6, 2006.)

Over the next four decades, federal agents skirted the new rule by having state and local police gather evidence, handing it over in what became known as the "silver platter doctrine." While the FBI was circumscribed, state and local police forces were unrestrained by the Fourth Amendment. And so the Supreme Court decided to crack down. By a 5-to-4 vote, *Mapp* v. *Ohio* applied both the Fourth Amendment and the exclusionary rule to the states. Law enforcement has never been the same.

Mapp was the first of the Warren Court decisions that introduced the phrase "overturned on technicalities" into our language. *Miranda* v. *Arizona*, governing criminal confessions, is better known for introducing the phrase "you have the right to remain silent" and excluding numerous seemingly authentic confessions. But the exclusionary rule has had a greater effect on policing. Even today, many a criminal will confess to a crime to "get it off his chest." Even if he later thinks better of it, and claims he was coerced, the jury will usually be allowed to hear the confession and sort out the truth.

Mapp, however, involves physical evidence. Murder weapons, drug caches, even dead bodies turned up in police searches can be excluded from a case forever. In such instances, prosecution becomes impossible. Before *Mapp*, the "fundamental fairness" of a trial was viewed as the ultimate standard for deciding procedural issues. Since the decision, the courts have become endlessly bogged down in technicalities—such as how many seconds the police must wait before entering a home after knocking.

One of the first people to recognize this profound difference was Alan Dershowitz, who was clerking for Justice Goldberg when *Mapp* was decided. In his book *The Best Defense* (1983), Dershowitz recounts how as a defense attorney he learned to "put the state on trial" so that the conduct of the police, rather than the criminal, becomes the focus of the trial. Candidly admitting that nearly all his clients were guilty, Dershowitz told how he was able to spring numerous clients by arguing the minutiae of searches and seizures. His greatest triumph came in 1984, when he got a reversal of the conviction of socialite Claus von Bülow for the attempted murder of his wife. The family of Sunny von Bülow, who was left in a coma from an insulin overdose, had hired a private detective to search their home, uncovering a "black bag" containing hypodermic needles and other incriminating evidence. Dershowitz successfully argued that Rhode Island police should have obtained a warrant in order to accept evidence from the private detective. Without the evidence, von Bülow was acquitted at a second trial.

In the early years of the *Mapp* era, countless search warrants were overturned because of a misspelled name, a faulty street address, or transposed license plate numbers. In New Hampshire, a child murderer was freed because his wife had allowed police to search the house without his permission. "Evidentiary hearings" became the standard opening round of any criminal prosecution, and countless cases collapsed when technical violations by the police made key evidence inadmissible. A particular favorite of defense lawyers was the Fourth Amendment phrase "describing the place to be searched, and the persons or things to be seized." What constitutes an accurate "description" of evidence? Such a question could occupy philosophy students for whole semesters. If the warrant specifies a 9mm Smith & Wesson and the gun turns out to be a .357 Magnum, is it admissible? Police over time learned ways to fudge such details, but the result was constant hair-splitting.

At worst, the exclusionary rule could become a simple excuse for judges to impose their will. In the 1970s and '80s, for example, the California Supreme Court under Chief Justice Rose Bird, openly hostile to capital punishment, overturned dozens of death penalty convictions. With metronomic regularity, the court would rule that a warrant had not sufficiently "described the place to be searched and persons or things to be seized." One notorious 1985 case finally led to the removal from the court of Bird and two colleagues by disgusted California voters. It

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involved Dr. Theodore Frank, a convicted child molester who had tortured and murdered a two-year-old girl. In the warrant, police had specified that they would search for "writings which could relate to the death of [the girl] and would indicate either participation and/or an interest in that death by Theodore Frank." What they discovered was a diary in which Frank confessed his fetishes. ("I want to give pain to these little children. I want to harm them.") The writings were read to the jury at the penalty phase, and Frank received a death sentence. Upon review, the Bird court ruled the warrant had been "overbroad," mere "boilerplate" that allowed police to "rummage" through Frank's possessions. They overturned the death sentence.

In 1984, an egregious Massachusetts case arrived before the Supreme Court. The bound and burnt body of a 25-year-old woman named Sandra Boulware had been found in a vacant lot in Boston. Her boyfriend, 45-year-old Osborne Sheppard, was implicated. Police obtained a warrant to search his apartment. Among other things, the warrant specified "a woman's jacket that has been described as black-gray (charcoal), any possessions of Sandra D. Boulware, similar type wire and rope that match those on the body of Sandra D. Boulware. . . . A blunt instrument that might have been used on the victim, men's or women's clothing that may have blood" on them, and so on. What they found was "a pair of bloodstained boots, bloodstains on the concrete floor, a woman's earring with bloodstains on it, a bloodstained envelope, a pair of men's jockey shorts and women's leotards with blood on them, three types of wire, and a woman's hairpiece, subsequently identified as the victim's." The Massachusetts Supreme Court threw out the conviction on the grounds that the warrant had not adequately described the "things to be seized."

The Supreme Court finally put an end to this nonsense, carving out a "good faith exemption" to the exclusionary rule. If the police thought they were acting in good faith in conducting the search, then the evidence could be admitted. But of course this vague rule only opened up more opportunity for semantics. Whose "good faith" was involved? The police or the judge who issued the warrant? What constitutes "good faith"? That was for future courts to debate.

Meanwhile, defense attorneys moved on to new territory. The phrase of choice became "probable cause." Yes, a warrant might have been issued in good faith, and yes, the warrant might sufficiently describe the persons or things to be seized. But was there "probable cause" for issuing it?

Here's a good example. In the 1971 Academy Award-winning movie *The French Connection*, New York City drug detective "Popeye" Doyle and his partner see a small-time mobster celebrating with a party of friends at the Copacabana. "Something doesn't look right," he says, and they decide to follow the party home. They stake out the residence and eventually uncover the biggest drug shipment ever to reach New York City—a true story.

Such an investigation would be blatantly unconstitutional under today's standards, and all the evidence would likely be thrown out. Police cannot stake out a person's home, even a mobster's, because "something doesn't look right." They cannot follow hunches or investigate because a person "looks suspicious." For the most part, they must have evidence that a crime is being committed. When they seek a warrant, they must have specific, detailed knowledge of what they expect to find.

Of course, this philosophy of policing finally came home to roost in August 2001, when Minnesota FBI agents arrested Zacarias Moussaoui, an alien with an expired visa who had aroused the suspicion of flight school instructors in Minneapolis because he wanted to learn to fly a commercial jet without having any interest in how to take off or land. Dutifully following established procedures, the Minneapolis agents applied to Washington for a search warrant to look into his computer. FBI lawyers there turned down the request. There was no "probable cause" for investigating any further. All they had was a suspicious guy with an expired visa taking flight lessons. After forty years of playing Russian roulette with the American public, the criminal justice system finally hit a loaded chamber.

What makes the exclusionary rule so absurd is that it only protects people who are guilty of crimes. If the police come to your house, knock down your door, ransack your home, throw all your belongings in the street, and find no incriminating evidence, then the exclusionary rule offers you no compensation whatsoever. Only if evidence turns up that shows you to be guilty of something are you rewarded.

In pointing out how dated the exclusionary rule has become, Justice Scalia noted both the "increasing professionalism of police forces" and the ease with which aggrieved citizens can now pursue other remedies against the police for the violation of their rights. "Citizens whose Fourth Amendment rights were violated by federal officers could not bring suit until 10 years after *Mapp*," Scalia noted. Since then, "Congress has authorized attorney's fees for civil-rights plaintiffs. . . . The number of public-interest law firms and lawyers who specialize in civil-rights grievances has greatly expanded. . . . [E]xtant deterrences against [Fourth amendment violations] are . . . incomparably greater than the factors deterring warrantless entries when *Mapp* was decided. Resort to the massive remedy of suppressing evidence of guilt is unjustified."

After 45 years, the misbegotten practice of freeing the criminal because the constable has blundered may finally be about to come to an end. ♦

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Klee's Craft

Simple lines, complex themes

BY MARTHA BAYLES

'The Angler,' 1921

Artists Rights Society (ARS) NY / VB Bild-Kunst Bonn

Paul Klee was not childish, despite frequent comparisons between his art and that of children. At the Phillips Collection in Washington, where 80 works by the Swiss-born modernist are now exhibited, the link with children's art is made explicit by an adjoining room filled with the sort of masterpieces proud parents affix to refrigerator doors.

A few of these are delightful. My personal favorite is "A Visit to The DIA" (Detroit Institute of Arts) by 11-year-old Gregory Stafford, which shows dinosaurs strolling through an art museum, gazing at paintings and sculptures of dinosaurs much like themselves. Rarely have I seen such eloquent tribute to art as mimesis; in the words of the German scholar Wilhelm Worringer, "The criterion of judgment to which we cling as something axiomatic, is, as I have said, approximation to reality."

Most child artists fail to achieve anything like an approximation to reality, but we forgive them because we assume their failure is not deliberate. For example, the jump ropers in seven-year-old Mikako Sugai's "Skipping" have limbs curved like rubber hoses, with no discernible joints. We smile because we expect that, one day soon, young Mikako will learn how to draw elbows and knees. But what about Klee's "The Angler" (1921), in which a sketchy little man teeters on the edge of an even sketchier pier, holding what appears to be a lead-weighted fishing line? His limbs are also curved like rubber hoses. And his face is distorted by an X on the forehead, a double mouth, and a reversed ear. And both his fishing line and the leg of the pier trail off in a bluish haze that deepens to indigo on all sides.

Paul Klee and America
The Phillips Collection,
Washington, until September 10
The Menil Collection, Houston,
October 6-January 14, 2007

Is "The Angler" a thwarted stab at realism? *Jawohl!* decreed Adolf Ziegler, president of the Reich Chamber of Visual Arts, when commissioned by Joseph Goebbels "to select and secure for an exhibition works of German degenerate art." In the summer of 1937, 16,000 modernist works were seized from German museums and collections, and "The Angler" was one of 650 chosen for the *Entartete Kunst* ("Degenerate Art") exhibition that toured Germany and Austria for the next four years. In that notorious show, which attracted 3 million viewers, the works

Martha Bayles, who teaches in the honors program at Boston College, posts a blog called Serious Popcorn *at* www.artsjournal.com.

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were displayed alongside scrawled inflammatory slogans and, in some cases, photographs of deformed or visibly deranged individuals.

Seventeen Klees were included as examples of "idiotic art" spewed out by a "primitive" mind mired in "disorder" and "confusion."

Klee's angler looks as though he could see this coming. Alone on his shaky pier, in a faint glow surrounded by darkness, he grimaces as he drops his line into the void. By 1921, when Klee made this picture, he was already quite successful. His work had been shown at two cutting-edge galleries in Munich and at the new Société Anonyme in New York; two scholars had written monographs about him; and American collectors such as Arthur Jerome Eddy and Katherine Dreier were starting to buy. (The support he received from Americans, and from Germans living in the States, notably Emmy Scheyer, is the focus of the Phillips exhibition.)

Nineteen-twenty-one was also when Klee began teaching at a new, experimental arts and crafts school in Weimar called the Bauhaus. Founded in 1919 by the architect Walter Gropius, it bobbed like a white-and-beige cork on wave after wave of political chaos and economic catastrophe, relocating to Dessau in 1925 and then to Berlin in 1932, where in July 1933 it was finally sunk by Hitler.

From Bauhaus to Our House, Tom Wolfe's hilarious send-up of modernism's impact on American architecture, aims many a barb at the "white gods" who emigrated to the United States in the 1930s. To Wolfe, it was a disaster when figures like Marcel Breuer (inventor of tubular steel furniture), Josef Albers (painter of squares), Laszlo Moholy-Nagy (progenitor of nine-tenths of the IKEA catalogue), and Mies van der Rohe (father of Glass Box Row, otherwise known as Sixth Avenue) became idols to the "savages" in "colonial" America. All the more striking, then, to read Wolfe's admiring take on Gropius's arrival:

> Gropius had the healthy self-esteem of any ambitious man, but he was a gentleman above all else, a gentleman of the old school, a man who was always concerned about a sense of proportion, in life as well as design. As a refugee from a blighted land, he would have been content with a friendly welcome, a place to lay his head, two or three meals a day until he could get on his own feet, a smile every once in a while, and a chance to work, if anybody needed him.

Of course, as Wolfe notes, Gropius stepped into a good gig as head of Harvard's Graduate School of Design. Yet unlike certain of his peers, he was not an egomaniac out to clone himself. Rather he was a prudent man whose leadership style resembled that of Duke Ellington: Recruit the top talent and give them their heads, up to a point (the trick being to find the point). By his own testimony, Gropius sought "men who would work, not automatically as an orchestra obeys its conductor's baton, but independently although in close cooperation."

This laid-back style may help to explain why Klee stuck around for seven years, despite never really buying into the program stated in the *Bauhaus Manifesto*:

> Let us create a new guild of craftsmen, without the class distinctions that raise an arrogant barrier between craftsman and artist. Together let us conceive and create the new building of the future, which will embrace architecture and sculpture and painting in one unity and which will rise one day toward heaven in the hands of a million workers, like the crystal symbol of a new faith.

Ignoring these grandiose aims, Klee devoted himself to the demanding, apprentice-style craft workshops that were the Bauhaus's chief distinction. As a fine artist, he was to lecture on such hands-off, "formal" topics as geometry, volume, color, and design. But he never scorned the hands-on, "practical" side. In the bookbinding workshop, he plumbed the mysteries of paper, ink, and glue; in the weaving workshop at Dessau, he learned about dyes and textiles from masters like Gunta Stölzl. The results can be seen in such lovely works as "Arabian Song" (1932), painted with thinned oils on rough jute and evoking not only the beauty of a veiled women (whose eyes look directly at you) but also the actual fabric of her chador.

Two other works on jute, "Gaze of Silence" (1932) and "Angst" (1934), also look at you, if less directly. "Gaze of Silence" offers a stylized eye painted in green, brown, and gold, which conjures thoughts of an owl, a masked man, or some other being with a cool, steady, disconcerting gaze. "Angst," painted in pale gouache on jute coated with chalk, is more dynamic: The eye shrinks to the left while glancing back (with a red vertical slit of a pupil) at amoeba-like tentacles clutching at it from the right. Some of the tentacles contain arrows, a favorite hieroglyph of Klee's, which indicate both motion and threat. Mostly the eye appears trapped, bound to the clutching tentacles by a sort of ligament. The image is that of a mind trapped by its own fears.

When Klee made these evocative pictures, he was no longer at the Bauhaus. Gropius stepped down in 1928, and his successor, the Swiss architect Hannes Meyer, was a Marxist who steered the Bauhaus toward strictly functional design, mass production, and the scientifically proven need of the proletariat to live in sterile, featureless housing projects. Three years later, Meyer took a group of students to Moscow to help Stalin build the modernist future, but Stalin preferred the Socialist-Classicist ("wedding cake") style and Meyer was deported in 1936. The buildings he bequeathed to Dessau and East Berlin are so ugly even the Bauhaus-Archive Museum of Design describes them as "void of any creative component," "angular," "poor in detail," and having "quite a parsimonious appearance."

Both Stalin and Hitler hated abstraction and loved representational realism. Because of this, abstraction got a good rap after the war, realism a bad one. In the 1940s, when New York was the art capital of the world, and abstract expressionism the triumphant style, art lovers were exhorted not to look for recognizable images but to focus on formal elements like color,

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scale, paint quality, and (Clement Greenberg's obsession) "the illusion of three-dimensional space on a flat surface." Artists who cared about subject matter were considered less "advanced," and many fine representational painters and sculptors were shut out of the booming art market.

Today, of course, the art market has boomed itself into senile dementia, with the world's number-one artist (according to *ArtReview*) being Damien Hirst, the aging YBA (Young British Artist) best known for his 1990s installations featuring animal carcasses and maggots.

Before I say something *verboten* about degenerate art, let us return to the Third Reich. It's worth noting that only 23 of the surviving pieces from the *Entartete Kunst* exhibition are totally nonrepresentational (16 of them by Klee's friend Wassily Kandinsky). Toward such art, the official charge was "sheer insanity." More severe were the attacks on works with recognizable but unacceptable subject matter: prostitutes, non-Aryans, the horrors of war, corrupt officials. (These subjects would have been taboo even if rendered in the approved stilted academic style.)

Severest of all were the attacks on "barbarism of representation," meaning "conscious disregard for the basics of technique," "garish spattering of color," and "deliberate distortion of drawing." These sins were not redeemable by inoffensive subject matter—indeed, some of the worst venom was hurled at landscapes, still lifes, and religious pictures done in the style of expressionism, fauvism, cubism, or some other "-ism" that got up the Führer's nose.

Why did the Nazis make such a fuss about art that was neither fully abstract nor fully representational? Could it be that they understood, albeit perversely, that ordinary people often enjoy such art? What do untutored museum-goers say when confronted with a totally abstract piece by Kandinsky or Jackson Pollock? Usually something like "Look, there's a face," "That is definitely a horse," or "I heard he was diagramming his own brain waves."

Told not to play these guessing games, museum-goers get frustrated. Why can't the damned artist offer a hint, a clue, something for us to grab onto? Give us that, and most of us will accept, even relish, large amounts of what the Nazis dubbed "distortion." Especially if it looks beautiful.

Corbis / Michael Nicholson

Paul Klee, ca. 1930

Klee understood this, which is why his titles are user-friendly. Every museum-goer knows what it's like to read arrogantly obscurantist titles like "Hegemonic Aurora," "Convolution XIV," "Up Yours," and the ubiquitous "Untitled." Visit a Klee exhibition, and you'll feel welcomed by helpful, often witty titles like "Little Regatta," "The Twittering Machine," "Sketch in the Manner of a Carpet," "Conjuring Trick," "Arches of the Bridge Stepping Out of Line," "Lonely Flower," and "The Sick Heart."

What these titles represent is a burning desire to communicate what lies hidden beneath outward appearances—a motive very far from obscurantism. And it is this desire to make visible what is invisible, not some imagined freedom from the rigors of art-making, that forges the true link between Klee's art and that of children.

Klee was interested in children's art because he occupied the middle ground between representation and abstraction. Children occupy that same ground, for two reasons: perceptual freshness and technical incapacity. But unlike countless postwar art educators, Klee did not think that the way to preserve the freshness was by prolonging the incapacity. No art without craft, was his credo. As he explained in a 1924 lecture, "Our pounding heart drives us down, deep down to the source of all. What springs from this source—whatever it may be called, dream, idea, or fantasy—must be taken seriously only if it *unites with the proper creative means to form a work of art*" (emphasis added). By "proper creative means," he did not mean fingerpaint.

Even though Gropius's successor Meyer had no use for what he contemptuously called "the individual emotional activity of an artist," Klee stayed at the Bauhaus until 1930, at which point he took what he hoped would be a secure job at the Düsseldorf Academy of Fine Arts. But in 1933 he was fired and forced to flee with his wife Lily to his hometown of Bern, Switzerland, where he lived until 1940, suffering from schleroderma but producing an amazing body of work.

When he died, at age 60, the world was plunged in war, and it hardly seemed as though one individual's painstakingly wrought little pictures (most of them less than two feet on a side) would end up towering over the grandiose cultural projects of Hitler and Stalin. But, mercifully, and with a little help from Klee's American friends, they did. ♦

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America by Numbers

Lots of data, but little insight, about global opinion.

BY PAUL HOLLANDER

There are two major schools of thought about anti-Americanism. One postulates that it is a response to the wrong-headed policies of the United States and the defects and injustices of American society. By contrast, in the second view, such sentiments stem from grievances of a wide range and variety nurtured by a hostile predisposition largely independent of what the United States does. Many of these grievances are associated with the problems and unintended consequences of modernity, of which the United States is the major symbol and vehicle.

America Against the World
How We Are Different and Why We Are Disliked
by Andrew Kohut and Bruce Stokes
Times, 288 pp., $25

The second perspective also draws on the recognition that human beings prefer to find the sources of their misfortunes and frustrations outside themselves. Anti-Americanism is one expression of this impulse which, in our times, finds a plausible target in the United States, especially since it has become the only superpower and the only country that has produced a popular culture with both global appeal and a capacity to undermine traditional cultural values and ways of life.

Anti-Americanism may also be seen as blending reasonable critical responses to the policies of the United States with less-than-fully rational attitudes that are not dependent on specific actions or policies. To make matters more complex, well-founded critiques of specific policies often merge into or culminate in the diffuse, undifferentiated hostility nurtured by predisposition.

Nonetheless it is possible to differentiate anti-Americanism from rational critiques of specific American policies, foreign or domestic, or from the moral failings of American society. Anti-Americanism entails wholesale rejection resting on the apparent conviction that the defects of American society and U.S. policies abroad are not corrigible, but inherent and endemic. In its most florid and extreme form, it rests on the conviction that the United States is the most evil and corrupt social-political entity ever known in history.

This volume, based on 91,000 interviews conducted between 2002 and 2005 in 51 countries, is doubtless the major repository of information about attitudes and opinions about the United States and about political and cultural values relevant to these attitudes. It does, however, come with a substantial conceptual flaw: There is no discussion of the many possible meanings or shadings of anti-Americanism. The authors don't tell us about their understanding of what it is, or offer a widely accepted definition. They *do* tell us about some of its sources and manifestations, but not what exactly it *is*. For example:

> Anti-Americanism runs deeper . . . than in the past. . . . Several factors led to this conclusion. First, America's image had declined around the globe. . . . Second, attitudes towards the American people, in addition to the U.S. government, were adversely affected. Third, the United States was being criticized for its ideals as well as policies. Fourth, citizens around the world feared America's unrivaled power.

In these observations, the sources of anti-Americanism are conflated with its symptoms. Elsewhere, they write that the new anti-Americanism is "an amalgam of discontents" which includes negative reaction to American popular culture, resentment of American-style business practices (such as longer work days), and, more generally, the "acceleration in the pace of modernization [that] threatens to overwhelm traditional ways of life."

Later they single out unilateralism as the major factor: "This perception of American unilateralism in international affairs is at the root of much of the anti-Americanism that has surfaced in nearly all parts of the globe over the last half decade." They also propose that "some of the many criticisms of Americans arise from simple misunderstanding," among them the belief that Americans are more nationalistic than Western Europeans.

They further argue that "Americans do not want to rule the world. . . . Americans are tolerant of religious diversity and most have no interest in converting the world to their faith. Americans are strongly individualistic . . . but they are not against working with others."

The main objective and accomplishment of this volume is the presentation of data that show in detail the differences between how Americans see themselves and how the world (and especially Europeans) see them and their social, political, and economic system. It is these differences, in the authors' view, which hold the key to understanding anti-Americanism. These differences are referred to as the famous American "exceptionalism" first noted by Alexis de Tocqueville. At the core of it is American individualism, the belief "that individuals themselves, not the larger forces of society, determine whether a person will be successful in life."

The premise, however, is questionable. Differences *per se* are not necessarily a source of animosity, either between individuals or countries. They can also be a matter of indifference, or

Paul Hollander is the author of Anti-Americanism *and editor of* Understanding Anti-Americanism.

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a source of admiration, even veneration. Different attitudes toward personal autonomy, or the length of the workday, church attendance, or belief in an afterlife, are unlikely to inspire the kind of visceral hostility we associate with anti-Americanism. Moreover, the authors don't seem to be able to make up their mind about the nature and impact of American exceptionalism. They vacillate between documenting it and dwelling on it, and diminishing or dismissing its importance. They define it as:

> A unique mixture of liberty, egalitarianism, individualism, populism and laissez-faire values. . . . Americans are more strongly individualistic than Europeans, more patriotic and culturally more conservative.

But soon they qualify it:

> A careful reading of the data suggests that the value gaps between Americans and non-Americans are not, in fact, so great. . . . Despite the current negative image of America . . . there is broad global acceptance of the fundamental economic and political values that the United States has long promoted.

They also write: "Americans not only differ with Europeans about how the free-enterprise system should operate; they also view work itself in a different light." But on the next page we learn that "Americans and Europeans value their work in almost equal measure." As for globalization (another source of anti-Americanism): "Even Americans—whom others see as standard bearers of globalization—are far from exceptional when it comes to the global forces shaping today's world.

"In fact when it comes to globalization, what makes Americans exceptional is how unexceptional they are."

It is further proposed that "many of the differences between Americans and Europeans reflect the internally inconsistent attitudes people everywhere hold about . . . globalization and modernization. In this regard Americans are hardly exceptional." Even regarding religiosity and its influence on U.S. foreign policy—another supposed source of anti-Americanism, at any rate in Western Europe—we learn that "for all of [George W.] Bush's religious imagery, its impact on American views on foreign policy . . . has been unclear."

The qualifications and vacillations seem to be a (paradoxical) result of the praiseworthy effort to be nuanced and avoid sweeping generalizations unsupported by data. They may also result from the sheer mass of the data collected, and the absence of a theoretical focus or framework.

These data also raise the old question as to just how dependable opinion polling is, or to what degree the opinions people express accord with their behavior.

For instance, we are told that "when presented with a choice people around the world say they no longer see America as the prime land of opportunity." Are these the same people who are pouring into, or seeking to enter, this country, the millions of legal, illegal, and would-be immigrants? For reasons not explained, the question about "where is the land of opportunity?" was not addressed to Latin Americans and Africans; or if it was, the result was not reported.

And what are we to make of the professed belief of three in five Americans that "Hispanics . . . have a good influence on the country, according to the 2005 Pew survey" at a time when there are many indications of widespread anti-immigrant sentiment, most of them directed at Hispanics? Americans are well aware that it is politically and morally incorrect to show animosity toward ethnic groups (such as Hispanics) and this may find expression in their responses to polling.

It is also somewhat peculiar to refer to Nicaragua "in the 1980s" as "a country where socialism thrived." Is that why, at the end of the decade, the government was overwhelmingly voted out of power, and hundreds of thousands had left for Florida and elsewhere while the Sandinistas were in power?

So what can we learn from this impressive accumulation of data that we did not know before? Many things we knew in broad outline are here confirmed: that Muslim populations are far more anti-American than others, that anti-Americanism greatly increased after 2001 around the globe, and that the U.S. occupation of Iraq antagonized publics almost everywhere.

It is an interesting and unexpected finding that, in some ways, Americans are more critical of their society than foreigners: "Fully 70 percent of Americans described their fellow countrymen as greedy, a harsher criticism than that leveled by any non-Americans in the survey." Many Americans would also be surprised to learn that "they are closer to Muslims than Europeans with respect to [religious] observance and commitment, as well as attitudes of personal morality such as homosexuality." It is also of interest that "Americans of all political and cultural stripes are more alike to one another than they are like Western Europeans"—a finding that confirms the sometimes disputed concept of national character.

Yet the final conclusions, too, are contradictory. On the one hand the authors propose that "as to anti-Americanism in the 21st century, the American public's exceptional values and basic attitudes have undoubtedly contributed to discontent with the United States," and that "in the end, American exceptionalism, all that it is and all that it isn't, is what shapes attitudes toward the United States around the world. Much of what fuels current anti-American sentiment around the world—perceptions of American nationalism and religiosity—is misinformed."

But if these perceptions are misinformed, wouldn't that cast doubt on the notion of exceptionalism? In the end, major questions about the recent growth of anti-Americanism remain unanswered. Has it originated in the mistakes and unattractive attributes of the United States? In its "exceptionalism," real or exaggerated? In the disposition to blame it for grievances and frustrations that it is not responsible for, including the ambiguous benefits of modernity, avidly pursued around the world? The huge amounts of data notwithstanding, the reader is left unenlightened about these essential matters. ♦

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Splitsville

We know Hollywood marriages have a short shelf life, but we want to know why. **BY JUDY BACHRACH**

Eddie Fisher, Debbie Reynolds, 1956

Corbis / Michael Ochs Archives

Let's say you need to know why Madonna couldn't stay married to Sean Penn for more than a minute, or what Ava Gardner had against Frank Sinatra, even after he told her, "You're all I want," and then threatened to kill himself if the feeling wasn't mutual. (It wasn't. He didn't.)

Or for that matter, let's assume you are *still* wondering, six years later, why Ellen DeGeneres, after necking up a storm in public with the skinny actress Anne Heche, couldn't manage to make their relationship endure. Where do you go to get the dirt on divas?

The Hollywood Book of Breakups
by James Robert Parish
Wiley, 312 pp., $16.95

Well, one answer is *The Hollywood Book of Breakups*, a compendium of weepy tales by a clip-master with fine organizational skills and a brisk cheerleader for the underdog in each failed romance. ("Such are the ways of Hollywood," James Robert Parish writes bitterly after Clint Eastwood wins a 2004 Oscar for *Million Dollar Baby*, while the career of his dumped girlfriend, Sondra Locke, founders.) Another solution to such unquenchable curiosity is, I'm afraid, Google, which is $16.95 cheaper than *The Hollywood Book of Breakups* and, in certain instances, juicier and more authoritative.

Not that I'm knocking Mr. Parish's *métier*. It is always gratifying to discover that the wealthy, famous, and beautiful can be every bit as dumb in love as the poorer and plainer—even dumber, in certain wonderful instances. For example, we discover in this book, after hearing that her second husband Eric Benet was involved with a pretty model from (of all places) Milwaukee, the actress Halle Berry *and her mother* leaned on Eric to enter a clinic that specializes in sexual addiction. Yes, they did.

Alas, Mr. Parish describes this sex rehab interlude as a "seeming confirmation of Eric's unfaithfulness," which is pretty namby-pamby verbiage for a summer read. Also, it might have helped had the author done some hard digging on his own (or perhaps more comprehensive clipping). That way he could have discovered, for example, that Meg Ryan left Dennis Quaid not merely because of boorish-but-hunky interloper Russell Crowe, but because, as Ryan told me, Quaid had a wandering eye.

(I know, I know. Publishing house lawyers are famously even more stupid and spineless than those who frequent sex addiction clinics on the advice of their mother-in-law. But still.)

More interesting than the summaries of modern celebrity heartaches (Uma Thurman, JLo, Cher, etc.)—which, thanks to the beauty parlor, we have all by now committed to memory—are the long-ago splits of the Ur-stars. Who knew that Barbara Stanwyck, like her husband Robert Taylor, was "reputedly bisexual"? Or that she called him "Junior." Or that he messed around with Ava Gardner, along with an Italian babe named Lia Di Leo and a ballerina named Ludmilla Tcherina? Part of the charm, for me, of this compendium is the number of times I found myself saying, "Who?" and never entirely finding out.

In fact, the book would have benefited greatly from some cross-referencing. For example, in the chap-

Judy Bachrach is a contributing editor to Vanity Fair.

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ter entitled "Debbie Reynolds vs. Eddie Fisher," we learn that in June 1954 at the Cocoanut Grove club in Los Angeles, Eddie first made eyes at Debbie. At this point some "fanciful beauty" named Pier Angeli, who thought she was Eddie's date, "fled in tears." (In Mr. Parish's book, almost everyone, not just the fanciful, does this sort of thing. Also, they don't necessarily fall in love. They have "amours.")

It would have been helpful had the author reminded us that this fleeing Pier was the same "petite performer" beloved of James Dean and Kirk Douglas some 200 pages earlier. Or that, ultimately, Pier wed neither of her previous amours but instead chose the singer Vic Damone in 1954. Except, as you probably guessed, the Damone/Angeli union "proved stormy," perhaps because "his movie-making career fizzled and hers waned."

(On the other hand, as the author frequently points out, movie career failure is by no means the only cause of marital angst. Another blow to enduring love is movie career triumph. Mr. Parish memorably observes that "success, money and fame were not enough to keep Jennifer Aniston's and Brad Pitt's high-profile lives on the same track." This is possibly not good news for Angelina.)

Why so much emphasis on girl grief? Because that's life. That is also, as it happens, the way the author has composed his book. All chapter headings begin with the lady's name. A gallant gesture, certainly, but one that can lead to a good deal of head-scratching: "Phyllis Gates vs. Rock Hudson," for instance, or "Lupe Velez vs. Johnny Weissmuller."

Yes, Mr. Parish knows who his readers are—the spiritual sisters of Lupe and Phyllis. Of Madonna and Jennifer. But that he doesn't know nearly enough is the problem. Why *did* Bruce fail to make Demi happy? Is the phrase "had been drifting apart for years" really supposed to be an eye-opener? The author thinks we can be satisfied with an appetizer. What we really want is the dish. ♦

The Village Atheist

Daniel Dennett's answers avoid the Big Questions.

BY THOMAS W. MERRILL

Are atheists a disadvantaged group? Do they need to have their consciousness raised about their solidarity with each other, perhaps by giving themselves a new name, in the same way that gays did?

Daniel Dennett, a philosopher with a political agenda, thinks so. Unlike other professors with a political agenda, Dennett doesn't agitate for this or that cause—for the Democrats, say, or, less likely, for the Republicans. As he revealed in a *New York Times* op-ed in 2003, his cause is to make professors a political movement as professors. Dennett, a professor of philosophy at Tufts, and a noted proponent and popularizer of evolution, calls this nascent movement the "brights," by which Dennett means people who refuse belief in the supernatural, in God, and in the afterlife, people who ask for evidence rather than accept things on faith, self-described rationalists.

Breaking the Spell
Religion as a Natural Phenomenon
by Daniel C. Dennett
Viking, 464 pp., $25.95

The problem, it seems, is that brights, thanks to a combination of bashful modesty and cowardice, have been intimidated by religious types, including Osama bin Laden and George W. Bush. By coming out of the closet as a bright, Dennett aims to inspire atheists across the country to follow suit and to become political actors: Out of the closet, brights, and to the barricades!

As *Breaking the Spell* reveals, the effective truth of his stirring rhetoric is a plea for more funding for scientists and philosophers like Dennett to study religion. "Breaking the spell" refers both to the reluctance of scientists (and grant-giving agencies) to support the study of religion and to the spell of religion itself, which Dennett clearly thinks is malarkey. No longer will scientists allow themselves to be barred from studying religion because of sensitive feelings and political considerations. Nor will they let themselves be detained by the substantive arguments that might be made on one side or the other—those arguments never change anyone's mind, Dennett says. Rather, the more effective means of breaking the spell is proving that religion is something natural, something that evolved—useful for survival once, perhaps, but now no longer.

Religion, Dennett hypothesizes, might be something like our taste for sugar. We developed a taste for sugar at a stage when human beings needed all the energy we could get. Now, though, we eat way too much of it and end up with cavities. Religion must have developed in a similar way, Dennett suggests, perhaps as a combination of our proclivity to attribute intentions to the world and our need to coordinate in groups.

Once useful, religion is now an anachronism, a hangover from some more primitive world. And if religion really is like our taste for sweets, then maybe we need something like an FDA for religion, to regulate our intake of religious ideas. We might especially have to regulate how much religion parents can teach their children, as Dennett speculates.

However, neither the political nor the theological consequences that

Thomas W. Merrill is a tutor at St. John's College, Annapolis.

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Dennett wants to draw from his science are persuasive. Needless to say, it would be churlish to reject out of hand the prospect of studying religions from the point of view of social science and evolutionary biology. Who wouldn't be interested to know, for example, whether there are biological roots to religion or to irreligion? Or whether religious people are more likely to stay married, lead happier lives, and so forth? There is a real world out there, after all, and it's hardly controversial that every human institution has to survive in a more or less harsh environment. No doubt that isn't the whole story, but we would be foolish to shut our ears to it. So if he wants to spend his time investigating these things, by all means, have at it, Mr. Dennett.

Whatever the merit of Dennett's scientific claims, though, it would be hard to overestimate the political naiveté of his proposals. "Brights," after all, sounds more like an after-school club for honors students peevish over not being elected to student government than a serious attempt at building a political movement. And one doesn't need an extended reading of Tocqueville to figure out that telling your unenlightened brethren that you're bright and they're dull—despite Dennett's protests, it's hard to avoid the inference—isn't exactly a winning strategy in this democratic age. This boasting rationalist with a political agenda could benefit from a focus group or two.

And even if it's true that religion, or some religions, arose in the way Dennett sketches, nothing follows about the truth of any particular religion. Here Dennett's decision to close his ears to the substantive arguments on either side is the more fundamental flaw in his project. Of course, the real religious types can speak for themselves, though we're not likely to hear them if we think (like Dennett) that religion is sheer Santa Claus talk. Dennett says the arguments about religion have gone on forever, and they never convince anyone anyway.

Well, they have gone on forever; but does that mean that we can now sidestep them? As for the claim that they never convince anyone, we can only say: Try me. Without at least putting a little toe in the waters of religious disputation, Dennett leaves himself open to the objection that he cuts the questions we really care about down to the size of his methods. He shrinks the aim to get reliable results—a necessary strategy for an academic trying to convince an agency handing out grants of his worthiness, but not so satisfying for the rest of us yokels (can we call ourselves the murkies?) who want to know how we should live.

Dennett reserves his particular scorn for those who are not wholly persuaded by the claims of religion but do not openly oppose it. These closet brights must be keeping quiet, he asserts, out of cowardice or prudence, and Dennett aims to jolt, or inspire, them out of their stupor. But what persecution these supposed atheists face in this skeptical age is beyond me, so perhaps another interpretation is more likely. If being open-minded means questioning our deepest assumptions, a would-be philosopher might have to seek out the most powerful challenges to his or her own starting point. So somebody following Dennett's motto—question everything!—might even like to have some of these religious types around—and not just as a monument to human folly, as Jefferson suggested, but as a standing challenge to their own certitudes.

Maybe, then, a philosopher needs the religious types around just to be himself; that is, to be genuinely and deeply reflective. That's obviously not the same thing as the belief of the believer, but it does point towards genuine, nonutilitarian grounds for a certain openness and even deference to religion—in a formula: no deference, no conversation. To do that, though, Dennett would have to give up the comforting hope that science can answer our deepest questions and return to a more honestly skeptical philosophizing—skeptical in its original sense of seeking, not dismissive.

But then again, skepticism of that sort doesn't bring in the grant money. ♦

What Luther Wrought

Protestant Europe and the invention of the modern world. **BY JAY WEISER**

The last age of religious wars was the Reformation, the Protestant-Catholic convulsion whose scale (so far) puts our war with Islamist fascism to shame.

In 1517, Martin Luther nailed his 95 theses to the church door in Wittenberg. Or he didn't—like many other electrifying moments in the Reformation, this may not have actually happened. But regardless of Luther's carpentry skills, his ideas changed the world. In its ceaseless struggle between irreconcilable religious opponents, its international scope, and its unanticipated results, the Reformation sheds light on our own age.

These two witty books by Cambridge and Oxford academics—Patrick Collinson's 238-page miracle of compression and Diarmaid MacCulloch's all-seeing 792-page survey—address the intersection between theology, social change, and political and military conflict, and reflect a generation of work by armies of scholars on this sprawling 200-year period. Collinson focuses primarily on 16th-century developments in what we would now

Jay Weiser teaches law at Baruch College's Zicklin School of Business.

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Hulton-Deutsch Collection / Corbis

'Luther at the Diet of Worms' by F. Nargeot, 1862

call Western Europe, while MacCulloch deals with non-Orthodox Europe (the region that roughly coincides with today's European Union) during 1500-1700, and reaches as far as the Spanish conquest of the Americas.

This allows him to explode the traditional narratives of a few iconic German and Swiss theologians, or of a multitude of discrete national struggles. Instead, he comprehends the Reformation's common themes across a vast international canvas, in places as far-flung as Protestant Transylvania, whose struggles were influenced by those between England's Anglicans and Calvinists, and 16th-century Poland—not today's Catholic bastion but, instead, home to a large Protestant community—which had a pioneering movement for religious freedom.

It started, says Collinson, with Luther's revelation that only faith in God (as opposed to good works) could offer salvation. From this, the whole edifice of medieval Christianity crumbled. MacCulloch argues that the Reformation's core conflict was between two warring aspects of the thought of St. Augustine who, in the 4th century, preached both individual salvation by the grace of God and obedience to church authority in interpreting God's commands. Once people focused on their own individual faith, some became unwilling to accept the traditional teachings (and the authority) of the Catholic Church, believing that worshipers received grace directly from God without the intercession of the Catholic Church's elaborate institutional apparatus.

The Reformation
A History
by Patrick Collinson
Modern Library Chronicles,
238 pp., $21.95

The Reformation
A History
by Diarmaid MacCulloch
Viking, 792 pp., $34.95

The unity of Augustine's thought blew apart. Within a decade, the Reformation resulted in a break from the Catholic Church, with about half of non-Orthodox Europe turning Protestant at its peak around 1600. And just as the post-World War II expansion of communism led to a defense of democracy by the West in the Cold War, the expansion of Protestantism led to a reaction by the defenders of Catholicism and papal authority: the Counter-Reformation. But from the perspective of the 21st century, Reformation and Counter-Reformation shared many similarities—moral equivalence, if you will.

While modern Christians are the children of the Reformation and Counter-Reformation, many of the period's doctrines are strange from today's perspective. For example, few Christians today hold to the extreme early Calvinist doctrine that salvation is purely a matter of divine grace, unaffected by behavior on earth. (Even John Calvin had problems with this.) If anything, the modern fundamentalist emphasis on Biblical morality elevates earthly behavior to as high a level as the need to accept personal salvation from Christ. Collinson and MacCulloch, sometimes sheepishly, explicate the theological disputes of the period which, despite their infinite arcaneness, were deadly serious. It is hard to

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comprehend that there were mass executions over whether and exactly how the host of the Mass was transubstantiated into the body of Christ—at least until you consider the beheadings and stonings of those who violate Sharia law today.

The Reformation was not, contrary to myth, a reaction to a corrupt church that was failing to fulfill the spiritual needs of its flock. While there was corruption aplenty in the parish endowments looted for sinecures for absentee clergy from noble families, most parishioners were satisfied with the spiritual services they were receiving. Instead, MacCulloch argues, the Reformation and Counter-Reformation were primarily ideological movements initiated by small, literate elites, and only later taken up as popular movements. This has been the pattern for revolutionary movements ever since, down to Islamist fascism, whose tribunes have been the disaffected, highly educated sons of the middle class and wealthy.

Nor did the theological ferment begin with Luther. Humanists like Erasmus had already begun closely reading Biblical texts and discovering their numerous contradictions. For example, there is no direct textual support for the perpetual virginity of the Virgin Mary. The Bible doesn't even agree on what the Ten Commandments were—there are two versions in the Old Testament, with the Deuteronomy version numbered in two ways by different groups.

European thought had already begun to move away from the medieval ritualistic emphasis on the Mass, and toward a simplified, more direct, form of worship. Spain, a core supporter of Pope-centered Catholicism, notwithstanding its frequent distaste for reigning popes, actually had a pre-Reformation, around the time of the final conquest of Granada and the expulsion of the Jews in the late 15th century, that anticipated many of Luther's reforms. Luther catalyzed what was in the air, and unwittingly became the head of a movement.

The results were cataclysmic, and rapidly spread beyond theology. By 1524, fuelled by resentment over indulgences—effectively, a tax to pay for Pope Leo X's grandiose rebuilding of St. Peter's Basilica in Rome—German agricultural communities launched the so-called Peasants' Revolt. Far from being peasants, the leaders were actually substantial landowners and, in prior generations, similar disputes had been resolved by negotiations with local nobles. This time, the conflict brought in the would-be universal monarch, Charles V, king of Spain and Austria and Holy Roman Emperor, who quashed the uprising.

After a spasm of additional mid-16th-century wars, Lutheranism stabilized in northern Germany and Scandinavia, but this did not end the turmoil. The Reformation, like our own period, was a golden age for religious conspiracy. Calvinists, initially organizing through secret cells, participated in 40 years of civil wars in France, while the Jesuits, militant arm of the Counter-Reformation, sent underground priests to destroy Protestantism in the British Isles. Radical Protestant groups smashed religious art, which they felt to be an idolatrous violation of the prohibition on graven images—shades of the Islamist threats following the publication of cartoons about Muhammad in a Danish newspaper.

Catholics proved adept at slaughtering Protestant civilians in actions such as the St. Bartholomew's Day Massacre in France, in 1572, and at terrorist assassinations like those of William the Silent of the Dutch Republic and Henry IV of France. In England, Guy Fawkes Day still celebrates the foiling of a September 11th-style Catholic plot to blow up the Houses of Parliament. Catholics also pushed back through the Inquisition, by the co-opting of Protestant nobility and, most spectacularly, in the Thirty Years War (1618-48), which killed somewhere between 20 percent and 40 percent of Germany's population.

It seemed for a time as if the Counter-Reformation might triumph. By the late 17th century, only about one-fifth of Europe beyond the Orthodox lands was Protestant, primarily along the northern edge. But that generation's Catholic champion, Louis XIV of France—now most famous for revoking the Edict of Nantes, which had guaranteed tolerance to French Protestants—called into being his nemesis, the Protestant William III, *stadtholder* of Holland and later king of England. After three huge wars over 40 years, Europe's confessional borders stabilized and Britain became the dominant power. And following two centuries of religious shifts that began with Henry VIII, English Protestantism diverged from European Calvinism and massively expanded in North America.

The Reformation shows the power of ideas. After Luther questioned the received verities, other thinkers—and dynasts and peasants—began following the logic wherever it led. Four centuries later, referring to the equally potent Communist and fascist ideologies of the 1930s, John Maynard Keynes said, "Madmen in authority, who hear voices in the air, are distilling their frenzy from some academic scribbler of a few years back." In the Reformation, this was exemplified by the Anabaptist Jan of Leiden, a butcher (or tailor) who took over the German city of Münster in 1534, proclaimed himself king, and took as many as 22 young wives. When the forces of order, appalled by his excesses, retook the city the following year, there was massive slaughter.

Luther's intellectual explosion led to an enforced rationalization of thought. Both Reformation and Counter-Reformation were intimately tied to state power, which led, after the mid-16th-century War of the Peace of Augsburg destroyed Charles V's dream of a universal Catholic monarchy, to the principle of *cuius regio, eius religio* (he who rules, his religion). As part of the rationalization, theologians required subjects to be drilled in appropriate beliefs. These catechisms are now associated with Catholicism, but Catholics in fact borrowed the concept, and sometimes the text (uncredited, of course), from Lutherans.

This push for consistency ultimately led to the Enlightenment—but before that, to vengefulness against

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those who would not comply. The Reformation was the golden age of burnings at the stake and persecutions of witches, both particularly favored by Catholics. Protestants, in turn, executed homosexuals with particular vigor. And many of the tribunes of the new, rationalized religion—Ferdinand and Isabella in Spain, Erasmus, and Luther himself—were virulent anti-Semites, though within Italy's papal states, most popes continued their historic policy of protecting their Jewish population.

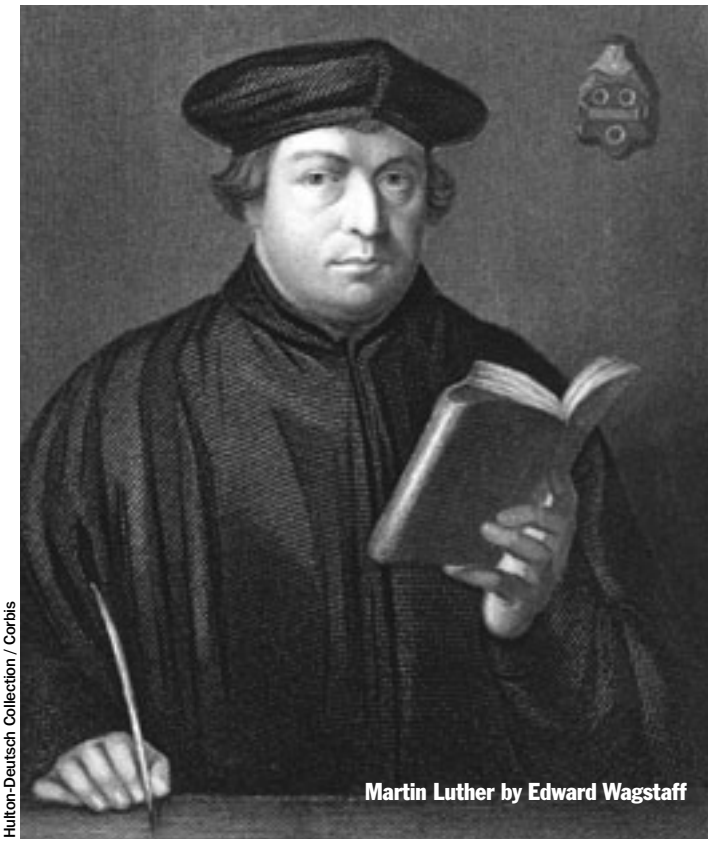
For those who refused to comply with local religious demands, there were state-ordered executions, or expulsions on threat of death. The Reformation generated hundreds of thousands of (mainly Protestant) refugees who refused religious conversion.

In the quests of Catholics and Calvinists for religious domination, the Reformation also teaches the power of exhaustion. The "long, twilight struggle" of the Cold War lasted a year less than the 44-year reign of Queen Elizabeth, who herself was a blip on an island at the edge of Europe during the two centuries of Reformation wars. By the early 18th century, the ideological fires were banked, even though Austria's Habsburgs continued to persecute Protestants for another 50 years.

Finally, the Reformation teaches the power of fragmentation. Even in the medieval period, Western culture was fragmented, with princes holding secular power and religious power concentrated in the Catholic Church. But the Reformation produced waves of Protestant sects seeking godliness in their own ways. Lutherans and Calvinists were joined by Anabaptists (the ancestors of today's Mennonites and Baptists), Quakers, and, in the 18th century, Methodists. This became a paradoxical source of strength. While Calvinists spearheaded the early phases of the Dutch Revolt, and dominated the Roundhead side in the English Civil War, they lacked the numbers and economic clout to impose a centralized theology in those countries.

That same fragmentation prevailed when the two countries planted their colonies. While there were established churches in North America in the 17th century, massive immigration meant that no denomination could prevail in the American stew, to the point where MacCulloch argues that the United States—the last religious country in the West, and a source of constant religious innovation—is the true heir to the Reformation. The path to Madison's *Federalist* 10, on the virtues of counterbalancing factions, was laid.

Even Catholics were less unitary than their Counter-Reformation theology suggested, with new or revitalized orders like the Jesuits, Jansenists, Capuchins, and Discalced Carmelites reaching out into the world to spread their vision of the truth, and often running into conflict with established authorities. The Catholic French monarchy fought for centuries against the equally Catholic Spanish and Austrian Habsburgs. The hostility was so deep that, as neither book emphasizes, one of the Catholic monarchies was usually allied with Protestants against the other monarchy, even while continuing to persecute Protestants at home. Nonetheless, the Catholic Church and the Habsburg monarch were centralizing forces that arrayed themselves against modernity—the proscription against Galileo's contention that the earth moved around the sun in 1633 being only the most famous example. Even in the late 19th century, Rome regarded democracy as a heresy, and in our era, Popes John Paul II and Benedict XVI, with their absolutist views of papal power, are worthy successors to the Counter-Reformation tradition.


Hulton-Deutsch Collection / Corbis

Martin Luther by Edward Wagstaff

The tangled, bloody history of the Reformation should give pause to those calling for an Islamic Reformation today. As Collinson notes, Islam has already had its Reformation. It was called Wahhabism—the militant 18th-century back-to-the-pure-faith movement with similarities to Calvinism, and the theology still driving Islamist fascism today. So while, as George Santayana famously said, "Those who cannot remember the past are condemned to repeat it," those who oversimplify it may not do much better. The Reformation was brutal and intolerant—and in its insistence on the primacy of the individual soul, its systematizing, and, ultimately, its grudging pluralism, it is one of the foundations of our modern world. ♦

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Truth Teller

The director who acted in the drama of the 20th century. **BY CHARLOTTE ALLEN**

Elia Kazan has always been hot, in my book, because he did two great things: He directed *On the Waterfront* (1954), one of the best American movies ever made, and he stood up to the (then, as now) irritatingly ultra-left Hollywood establishment in 1952, when he gave the House Un-American Activities Committee the names of eight Communists in the entertainment industry whom he'd known back in the 1930s.

Elia Kazan
A Biography
by Richard Schickel
HarperCollins, 544 pp., $29.95

As Richard Schickel points out, Kazan neither knew nor liked any of them anymore, and he hadn't cared much for them even back then. I've never been able to understand what was supposed to be wrong with what Kazan did. If you've ever read *Waiting for Lefty*, a dreary, formulaic piece of 1930s stage agit-prop—it's described on Wikipedia as being about "taxi drivers, from a Marxist perspective"—you'd want to denounce its author, Clifford Odets, too. Furthermore, Kazan's cooperation with HUAC earned him a lifetime of vituperation from Lillian Hellman, which is in itself a feather in his cap.

To his credit, Schickel, who has been movie critic for *Time* since time out of mind, was instrumental, along with *Waterfront* star Karl Malden, in arranging for Kazan, who was by then 89 years old and frail both physically and mentally (he died in 2003), to receive an honorary Oscar in 1999 over an opposition campaign that included: personal attacks by less grateful *Waterfront* star Rod Steiger (who implied to the press that Kazan was responsible for the heart attack of one of the eight names, even though the man was dead before Kazan offered his testimony, and the suicide of another Red whose name was not on Kazan's list); a huge anti-Kazan ad in *Variety* bought by the screenwriters' guild; screams from a gauntlet of picketers bearing signs reading "Kazan Is a Rat"; and the stony faces of about a quarter of the celebrities in the Academy Awards audience, who probably confused Kazan's eight Communists with their favorite political martyrs, the Hollywood Ten (a completely different group booted from the studios in 1947) and were determined to demonstrate *à la* George Clooney their courage and solidarity on behalf of a political cause that had been dead for half a century.

Kazan never could understand why the Communist party, which claimed to be no more than an idealistic political organization, had a right to keep the names of its members a secret, and, in any event, as Schickel and many others have demonstrated, most of the Red idealists of the 1930s and '40s were, in fact, either active Soviet spies or willing to become so.

The lifetime achievement award was richly deserved, as Kazan's films had won 22 real Oscars (including Best Director twice, for *Waterfront* and 1947's *Gentlemen's Agreement*) and 62 nominations in a 40-year career that also included many equally busy years on the Broadway stage. Elia Kazan essentially discovered the playwrights Arthur Miller and Tennessee Williams, directing the initial Broadway performances of *All My Sons*, *Death of a Salesman*, *A Streetcar Named Desire* (along with its 1951 film version), *Cat on a Hot Tin Roof*, and *Sweet Bird of Youth*. He also discovered Marlon Brando, whose Kazan-directed *cris de coeur*—"I coulda been a contender" (*On the Waterfront*) and "Stellaaaaaah!" (*A Streetcar Named Desire*)—are firmly entrenched in the mimicry of actors, professional and amateur, to this very day.

One of Kazan's prize discoveries was James Dean. He cast the nearly experience-free and startlingly foul-mouthed young actor in a 1955 film adaptation of John Steinbeck's *East of Eden* on the basis of a ride on the back of Dean's motorcyle. On the Warner Brothers set, Dean mumbled and muffed his lines and antagonized the other actors. Kazan, tired of Dean's propensity to show up for a day's shoot "looking wasted," moved Dean and himself into two bedrooms in an oversized star dressing room on the *Eden* set "Through the night [Dean] alternately boffed and fought with his current amour, the actress Pier Angeli, keeping his boss awake and irritated," writes Schickel, who was also on the set as a young journalist writing a story about the production.

As Schickel himself admits, his main interest in writing this "critical biography," as he calls it, was in Kazan's professional, not his personal, life. To that end, Kazan granted Schickel several long interviews before he died and also access to the notes and jottings (archived at Wesleyan University) that he made for every play and movie he directed. And that, along with Schickel's habit of interjecting his own political opinions gratuitously into the narrative, is the main problem with this book. It reads too much like an expansion of all those notes and jottings, every single one of them, for every single play and movie in which Kazan was involved.

Does one really want to read a complete plot summary of *Thunder Rock*, a Kazan-directed 1939 play set in a lighthouse in the middle of Lake Michigan and culminating with this Hitler-Stalin Pact-era speech: "America's not going to war; she's got a bigger job than war"? I think not. The first third

Charlotte Allen is the author, most recently, of The Human Christ.

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Getty Images / Hulton Archive

Elia Kazan, Marlon Brando on the set of On the Waterfront *(1954)*

of Schickel's book thus makes for slow going as Schickel dutifully trudges past every milestone of Kazan's theatrical apprenticeship in New York as an actor, and later, as a director, after graduating from Williams in 1930 and putting in two degree-less postgraduate years at the Yale Drama School.

It is not until Schickel reaches the 1940s, when Kazan had his first Broadway hit with *The Skin of Our Teeth* (1942), a Thornton Wilder opus about the history of the world that is almost as dated as *Thunder Rock* but was regarded as deep literature back then, and his first Hollywood success with *A Tree Grows in Brooklyn* (1945) that Schickel's book finally becomes anecdote-rich and engrossing. Who doesn't want to read about the time *Skin of Our Teeth* star Tallulah Bankhead, a loud-mouthed attention hog who regularly missed rehearsals and entrances, took a break from her efforts to get Kazan, whom she hated, fired from the production and jumped into his bed during the Baltimore tryouts—only to find it already occupied by a younger actress he had his eye on?

The problem with Schickel's book is that the "critical"—that is, the professional—aspect of Elia Kazan's life cannot be divorced from the personal aspect to which Schickel pays minimal attention. It seems clear from the dollops that Schickel does feed his readers that every facet of Kazan's career as a director—from his signature gritty, neorealistic film style, to his flirtation and eventual disenchantment with communism, to his propensity to work with relative unknowns such as Brando, Dean, Warren Beatty, star of Kazan's *Splendor in the Grass* (1961), and even Malden, to his almost invariable casting of blondes, who reminded him of the unattainable Anglo-Saxons his Williams classmates dated, as his leading ladies as well as all three of his wives—had its roots in Kazan's combative, conflicted, perpetually antagonistic personality.

In turn, the crucible of that personality was Kazan's gnarled relationship with his father, the harsh, authoritarian, and unloving Anatolian Greek immigrant and carpet merchant George Kazanjiouglou. Schickel describes the elder Kazanjiouglou (whose nearly unpronounceable surname he and his family soon shortened) as a terrifying figure who demanded absolute obedience from his wife and children and was even, in old age, "capable of making his famous son tremble."

Kazan himself Schickel describes as a "fierce and needy" young man, and so he remained throughout his life. A dark-skinned outsider at waspish Williams, Kazan projected this template of class conflict, and also the template of his perpetual struggle to assert his will against his father's, onto all relationships, his own and those that he perceived as shaping society at large. This, surely, was the attraction of the Communist party to the young Kazan. From 1934 to 1936 he belonged to a secret Communist cell for Manhattan theater people, but the party's demands for conformity and obedience undoubtedly chafed as much as had his father's.

At the time he was acting and directing in the Group Theater, whose members included Odets and "Method" pioneer Lee Strasberg, a lifelong friend of Kazan's who was not a party member (although his wife was). The Group modeled itself on the Soviet Union's Moscow Arts Theater and specialized in highly ideological socialist-realist plays that typically ended with shouted "workers of the world!" manifestoes and that few peo-

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ple, even during the Depression, wanted to see.

Kazan remained a lifelong leftist and self-perceived social rebel. His status as artist enabled him to play the perpetual rumpled-haired outsider. But, as he became successful, he fell out with the Group and its slavish obeisance to whatever Stalinist line happened to come down from Moscow. (It was the Group whose Communist members' names Kazan turned over to HUAC in 1952.)

Kazan's independent temperament also led him to dislike working with stars—Bankhead was the most obnoxious example—whom he deemed too set in their acting styles to be amenable to the strong ideas he had about the craft. He preferred to nurture the careers of less famous actors, and he even cast unknowns off the street in small roles in his films. Influenced by Strasberg's Method principles, Kazan believed that actors ought to infuse the characters they played with their own emotions, and to that end he would deliberately provoke those emotions, chiefly anger.

On the set of *East of Eden*, for example, he cultivated, even goaded, the mutual loathing that already existed between the obscenity-spouting Dean and Raymond Massey, a decorous, Republican-voting old-school actor who played Dean's hostile father in the film. "Do you think I'd kill that?" Kazan asked Schickel during the filming. In his notes, Kazan concocted tangled Oedipal back stories for the characters in the plays and films he directed.

Kazan's love life was equally tempestuous. His first marriage, to a Yale Drama School classmate and off-and-on playwright Molly Day Thacher, lasted 31 years and produced four children; but the cerebral Molly could not satisfy his yearning for high personal drama. From the beginning, there were numerous affairs, some brief and superficial, some lengthy and romantic. After Molly died in 1963, Kazan contracted two subsequent marriages, a distinctly unhappy one with the actress Barbara Loden (by whom he had fathered a child while married to Molly) and, after Loden's death in 1980, a happier union with Frances Rudge, former wife of Peter Rudge, manager of the Rolling Stones.

Kazan was thus perfectly suited in temperament to the melodramatic writing and larger-than-life characterizations that characterized the plays of both Miller and Williams, and made all three iconic presences in mid-century theater. As with his actors, Kazan helped shape their work, demanding, for example, that Williams substantially rewrite (or else rewriting himself) the sketchy first drafts that Williams typically submitted.

In Williams's first draft of *Cat on a Hot Tin Roof*, the most interesting character, Big Daddy, had simply disappeared after the second act. As for Miller, Kazan not only introduced him to his second wife, Marilyn Monroe, but shared her sexual favors—she was a blonde, after all—until Miller and Monroe got serious after a brief hiatus from her marriage to Joe DiMaggio. Miller was a cookie-cutter left-wing ideologue (as we know from his witch-hunting potboiler *The Crucible*), and he and Kazan had a rocky time of it after the latter decided to cooperate with HUAC, although they continued to work together intermittently. But it was not until late in both their lives that Miller publicly turned against Kazan and accused him and *Waterfront* screenwriter Budd Schulberg of stealing the plot of *The Hook*, another high-ideology Miller potboiler with a dockworker theme.

On the Waterfront represented the apotheosis of everything that had ever stirred Kazan ideologically and artistically: Its grainy black-and-white cinematography, heavily influenced by Italian neorealism (the film was shot, during a punishing winter, on the Brooklyn docks where it was set); its cast of relative unknowns, including many amateurs; its working-class story limned in Catholic iconography; and especially its central conflict, which eerily recapitulates Kazan's experiences with HUAC and the subsequent wrath of the entertainment-industry Reds, here represented by a corrupt union against whose racketeer bosses the Marlon Brando character testifies to the FBI.

Waterfront was a popular and critical success, but the left, including its New Left avatars in university film-history departments, has never gotten over Kazan's making a villain out of a labor union.

After *Splendor in the Grass*, Kazan's directing career went into swift and severe decline. There were major debacles: *America, America* (1963), in which he tried to put his Anatolian-immigrant experience onto the screen; and his last film, a disastrous 1976 adaptation of F. Scott Fitzgerald's *The Last Tycoon*, that wasted the talents of Robert De Niro and a host of others. There was the fiasco of his mid-1960s stint as director of the then-new Lincoln Center repertory company, in which Kazan tried to import Method techniques into Jacobean melodramas such as Thomas Middleton's and William Rowley's *The Changeling*. Abruptly fired by the Lincoln Center board in 1964, Kazan began writing long, semi-autobiographical novels that sold well but are nowadays unread and regarded as unreadable.

Molly's death was a terrible blow, and the death of one of his sons in 1993 was unendurable. By then Kazan was well along in the arteriosclerosis of the brain that ultimately rendered him incompetent, although he managed with the last of his ferocious energy to turn out an autobiography. His last years were pathetic: Nearly deaf, he sat at his typewriter in his Manhattan brownstone and pretended to write, although nothing much emerged.

Elia Kazan was a giant of the American theater and American film, and when its 20th-century history is finally shaped and put into context, his will be one of the few names to be remembered, although his heyday was brief. He was also a man of astounding courage in bucking a conformist hard-left entertainment establishment that, to this day, has both Hollywood and Broadway in a hammerlock.

Schickel's book does not quite do Kazan justice. It does, however, honor his achievements, as Hollywood still will not. And that is something for which I, at least, am more than grateful. ♦

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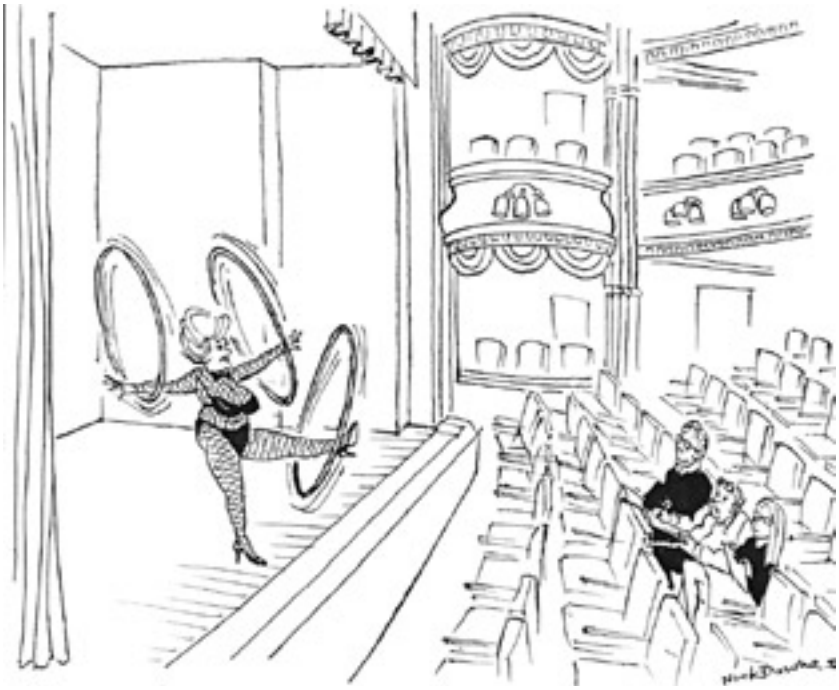

"Thank you, but we're casting 'The Crucible.'"

Books in Brief

***Disrobed: The New Battle Plan to Break the Left's Stranglehold on the Courts* by Mark W. Smith (Crown Forum, 272 pp., $25.95).** Justice Oliver Wendell Holmes Jr. once infamously wrote in a Supreme Court decision that "three generations of imbeciles are enough." In Mark W. Smith's new book *Disrobed: The New Battle Plan to Break the Left's Stranglehold on the Courts*, former law school professor Smith all but says that three generations of conservatives have been imbecilic—strategically obtuse, tactically blind—in their approach to issues of the courts and the Constitution.

But Smith shows himself to be far less a conservative legal theorist than a right-wing political hit-man. As the author of the *New York Times* best-selling *The Official Handbook of the Vast Right Wing Conspiracy*, Smith clearly is more interested in scoring showy political victories than in developing a principled, intellectually consistent, conservative jurisprudence. In what amounts to a book-length argument that two wrongs make not just a right but a far right, Smith argues—with annoying repetitiveness—that the way to "thwart the loony Left's assault on America" is to use "judicial activism" as a "secret weapon" to achieve right-wing goals.

Smith criticizes the political right for being "process-oriented," and for its tendency to "confuse the mechanisms of government with the greater ends." But conservatives have always understood that once the careful structure of government is ignored or dismantled, the whole citizenry will be vulnerable to predations by the left as a result of even the slightest or most seemingly temporary shift in power to the left's advantage.

Indeed, *Disrobed* reads like nothing so much as a parody by Ted Kennedy/Chuck Schumer of what conservatives actually believe. In doing so, it provides a wealth of ammunition to the far left to accuse conservatives of hypocrisy and perfidious intent. After all, Smith makes most of Schumer's arguments for him.

"At best," Smith writes, "phrases such as 'judicial restraint,' 'strict constructionism' and 'originalism' are, in effect, shorthand—code words for the judicial outcomes the Right favors." Indeed, he writes that all three notions are "utopian fantasies" and "a false idol."

And: "The reliance on foreign legal precedents as a mode of argument is something else to which conservatives should adjust. . . . Conservatives should cite foreign precedents if doing so helps them win."

And: "We need *results-oriented* [Smith's emphasis] judges devoted to advancing fundamental American principles. . . . The lesson is simple: We're all judicial activists now."

Or at least little Machiavellis, if Mark W. Smith had his way.

What's apparent from *Disrobed* is somewhere in the soul of attorney Mark W. Smith is a political campaign consultant yearning to breathe free. The late Lee Atwater would have heartily approved of Smith's combativeness and of his in-the-moment political savvy. But Atwater's job was to elect presidents and senators, not to select judges. For that, there are procedures outlined by the Constitution, designed to identify men and women most able to use right reason to defend that Constitution's principles. The book at hand mocks those procedures, and in so doing makes a mockery of the Constitution's principles in the name of saving them.

—Quin Hillyer

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About 300 Kiss fans gathered in front of the Rock and Roll Hall of Fame and Museum in Cleveland on Saturday to demand that the band be inducted. . . . The half-hour demonstration was in response to the band not being selected once again this year, even though it has been eligible since the late 1990s. **—News item**

Dozens hurt, arrested in Rock and Roll riot

By Charie Pustmueller
USA TODAY

CLEVELAND—What promised to be a relaxed combination of warm weather, good cheer, feel-good music, and nostalgia turned into frightening scenes of tension, violence, and bloodshed in what city officials are calling one of the worst cases of civil disorder in Ohio's second-largest city since the late 1960s.

Over 40 people were injured, several requiring hospitalization, and police arrested over 100 demonstrators on charges ranging from vandalism to assault to choking a law enforcement official.

The incident began shortly after 11 o'clock yesterday morning in the plaza in front of the Rock and Roll Hall of Fame and Museum, where approximately two dozen local fans of the 1960s bubble-gum band Ohio Express gathered to demonstrate their support for the band's induction into the Hall of Fame.

Just as the demonstrators were beginning to sing the second chorus of "Yummy Yummy Yummy," Ohio Express's 1968 chart-topping hit ("Yummy yummy yummy/I got love in my tummy/And I feel like a-lovin' you"), a larger, rival group of demonstrators, pressing their claim for the 1910 Fruitgum Company, arrived in charter buses by the sidewalk alongside the museum entrance, armed with home-made signs, megaphones, and stacks of 45 rpm records.

While the Ohio Express fans continued to sing, the 1910 Fruitgum enthusiasts launched into a spirited rendition of "Simon Says," another 1968 bubble-gum classic ("I'd like to play a game/That is so much fun/And it's not so very hard to do") that they believe will propel their favorite band into the Hall of Fame during the next round of inductions.

Accounts vary as to what exactly happened next, but police believe that one of the Ohio Express fans was struck on the head by a 45 rpm-wielding 1910 Fruitgum Company supporter, and the spirited singing of oldies in front of the Rock and Roll Hall of Fame and Museum soon turned ugly. As news spread in the neighborhood of the disorder, friends and admirers of the Strawberry Alarm Clock ("Incense and Peppermints," 1967) and the Archies ("Sugar Sugar," 1969), who had been attending a symposium inside the Hall of Fame, swiftly left the building to join the melee.

Hospital spokesmen said that many of the injured suffered from a broad array of preexisting conditions, including carpal tunnel syndrome, shin splints, high cholesterol, hemorrhoids, acid reflux, and gingivitis, which were complicating treatment.

Meanwhile, police are examining amateur videos and local television news footage to

Please see BRAWL on next page

America at a Glance©

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